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INFO·SHEET 6

Ontario Ministry of Municipal Affairs
John Eakins, Minister

DECEMBER 1988

MOBILE SIGNS

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INTRODUCTION

Signs

Signs are an accepted, necessary component of our built environment, providing information, direction, advertising and identification. A need for sign regulation is commonly perceived; traffic safety and avoiding the obstruction of light and air may be cited as justification but in truth the underlying motivation is likely to include a concern for aesthetics.

Attempts have been made to attack sign regulations in the courts on the grounds they restrict freedom of speech. These attempts seem to have been unsuccessful, at least insofar as they pertained to commercial signs. South of the border, a San Antonio total ban on portable advertising signs was upheld by the U.S Supreme Court in a 1988 decision.

Matters relating to construction and maintenance are governed by the Building Code. The location of signs and their height, bulk, size, spacing and character may be regulated in a municipal by-law passed pursuant to the Municipal Act.

The regulation of signs is a difficult exercise because of the problem of providing for all the possible variations in a by-law of general application. A simple, easily understood regulation is likely to be either overly restrictive or too permissive. It is a challenge to write a by-law of sufficient sophistication to deal with the complexity of the subject matter and to still make it reasonably intelligible.

Mobile signs

Most if not all of the general concerns about signs apply to mobile signs and these signs have an added potential for cluttering the streetscape because their location makes

them particularly intrusive. Their mobility also introduces a complicating factor to enforcement. They are often used to announce a special event which is over before the wheels of enforcement have turned very far. A sign existing in conformity with regulations one day may be much closer to the street the next and its flashing message may be a hazard to motorists. The fact that the user of a mobile sign is rarely its owner does not simplify the problem.

Since the negative impact of most temporary signs is short-lived, it may be wise to concentrate enforcement efforts on mobile signs whose users attempt to maintain them on a permanent or semi permanent basis. A real estate open house, for example, may be advertised by means of a mobile sign and this is generally accepted even where there is a blanket prohibition of mobile signs. Strong and swift action is possible, however, because the legislation allows the municipality to remove unlawful signs and charge the owner.

MUNICIPAL AUTHORITY FOR THE REGULATION OF MOBILE SIGNS

The general authority to regulate and prohibit signs and other advertising devices is contained in Section 210 (141) of the Municipal Act (R.S.O. 1980).

Temporary signs are provided for under Section 210(142) which states that a sign by-law may specify a time period during which signs or other advertising devices may stand or be displayed in a municipality and may require the removal of the sign once the alloted time period has expired.

Section 210(144) of the Municipal Act provides for the removal of unlawful signs, at the owner's expense. This applies only to signs erected after the by-law is introduced. Existing signs are protected by a legal non-conforming status.

Section 210(144c) gives municipalities the authority for the licensing, regulating and governing of persons who carry on the business of leasing mobile signs.

A zoning by-law is not an appropriate tool for sign regulation. The only provision for sign control in the Planning Act is in Section 40 (Site plan control) which makes specific reference to traffic direction signs only.

EXAMPLES OF BYLAW PROVISIONS FOR THE REGULATION OF MOBILE SIGNS

i) **City of Cambridge**, By-law Number 949

Definitions

"**Mobile Sign**" shall be any sign or sign structure which was expressly designed for temporary placement or erection on a site which is constructed to support, carry or display an area of changeable copy/or a read-a-board sign.

"**Read-a-Board Sign**" shall mean a temporary sign or any part thereof:

(a) not permanently attached to the ground or to a building, and

(b) designed for the temporary placing of copy, letters or messages.

"**Temporary Open House Real Estate Sign**" shall mean any sign which is not permanently installed or affixed and the content of the sign is to direct attention to a real estate open house where the sign is located or at another location.

Regulatory Provisions

Mobile signs and Read-A-Board signs are permitted only in accordance with the following regulations:

(a) No person shall install, erect or display, or cause to be installed, erected or displayed, any mobile sign or read-a-board sign unless:

(1) an application for a permit therefor has been submitted to the Commissioner of Planning & Development for the City of Cambridge and such application has been endorsed by the person for whom or on whose behalf the sign is proposed to be installed, erected or displayed, or by such person's agent other than the lessor of such signs.

(2) a permit has been issued and is valid for the date or dates upon which such sign is displayed.

(3) such sign is displayed within thirty days of the date of issuance of such permit.

(b) No permit shall be issued to permit a mobile sign or read-a-board sign to be displayed on any one property for a period of less than one week, for a consecutive number of days longer than one month or for a cumulative period of more than one hundred and twenty days in any calender year; provided, however, that for the purposes of this clause, each tenant of a multi-occupancy commercial building shall be deemed to occupy a separate property.

(c) No mobile sign or read-a-board sign shall be installed, erected or displayed except on an automobile service station site or in a commercial zone established in a restricted area (zoning) by-law passed pursuant to Section 39* of the Planning Act (R.S.O. 1980, Chapter 396), and except for one or more of the following purposes:

(1) to announce a change of use, occupancy or ownership;
(2) to announce the opening of a new store or establishment;
(3) to make a public service announcement;
(4) to announce a special sale;
(5) to announce a closing out sale or bankruptcy sale; provided, however, that notwithstanding Section (b) hereof, no mobile sign or read-a-board sign is displayed for such purposes for a period exceeding two weeks;
(6) to provide a substitute for a permanent sign which has been damaged or is being replaced; provided, however, that any purpose for which the mobile sign or read-a-board sign is displayed shall relate exclusively to the business conducted by the person to whom, or on whose behalf, the permit for such sign is issued on the property upon which the sign is displayed.

(d) The provisions of Section (b) shall not apply to the installation, erection or display of a mobile sign or read-a-board sign for a reasonable period of time for a purpose described in Section (c)(2) or (6) if no other sign is installed, erected or displayed at the same time on the same commercial property or automobile service station site and the applicant for the required sign permit submits evidence that a new or replacement sign has been ordered and has not yet been received.

(e) No person shall install, erect or display any mobile sign or read-a-board sign which does not have permanent affixed thereto in a readily identifiable location, the name and current business address of the owner of such sign.

(f) No person shall install, erect or display a mobile sign or read-a-board sign which:

(1) has any sign face greater than 6.7 square metres;
(2) is higher than 3.0 metres;
(3) is closer than 5.0 Metres to the intersection of two street lines or to the intersection of a driveway with any street line;
(4) is closer than 3.0 metres to any street line or any other property line if the site upon which the sign is to be installed, erected or displayed is located within specific designated areas.

(g) No person shall install, erect or display more than one mobile sign or read-a-board sign at any one time on any service station site or any property having less than 150 metres frontage on a public road; and in no case shall a mobile sign or read-a-board sign be installed, erected or displayed closer than 30 metres to another mobile sign or read-a-board sign already displayed on the same or another property.

(h) Notwithstanding the provisions of section (b) and (c) of this by-law, one mobile sign or read-a-board sign may be installed, erected or displayed on a site in an industrial zone established in a restricted area (zoning) by-law passed pursuant to Section 39 of the Planning Act:

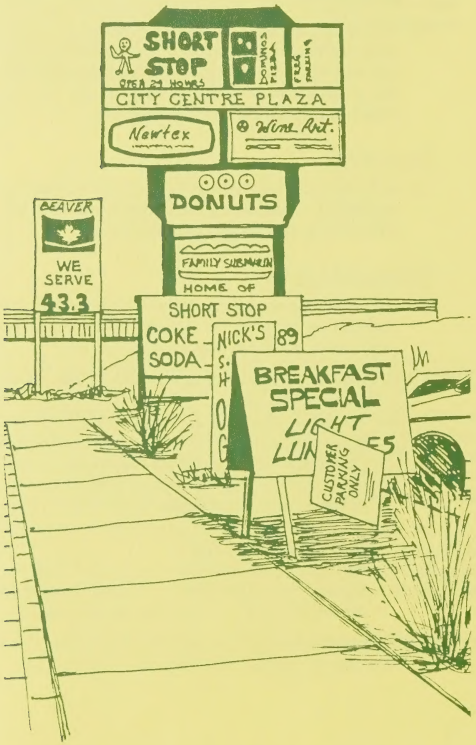
(1) for a period of time not exceeding two weeks to announce for a closing-out sale or bankruptcy sale;
(2) for a reasonable period of time for a purpose described in Sections (d)(2) or (6) if no other sign is installed, erected or displayed at the same time on the same industrial site and the applicant for the required sign permit submits evidence that a new replacement sign has been ordered and has not yet been received; provided, however, that either purpose for which the mobile sign or read-a-board sign is displayed shall relate exclusively to the business

* Section 34 in the 1983 Planning Act

conducted by the person to whom,or on whose behalf, the permit for such sign is issued on the industrial site upon which the sign is displayed, and provided further that all of the other requirements of this by-law are satisfied.

(i) Notwithstanding any other provisions of this by-law, no mobile sign or read-a-board sign shall be installed, erected or displayed on any public road allowance or other public lands.

Temporary open house real estate signs are permitted without a permit. The number is restricted to up to three at any intersection; the maximum area is 0.4 sq.m. per side and the maximum height is 0.75 m. They are allowed on the road allowance but not on the sidewalk.



ii) **City of Etobicoke**, Etobicoke Code, Chapter 215, (Signs) By-law Number 1978-135.

Scope

"No person shall erect, display, structurally alter or repair any sign or advertising devise located wholly or partly upon private property unless a permit has been obtained in compliance with the provisions of this chapter."

Regulatory Provision

"No portable or relocatable sign shall be erected or displayed in any zone."

iii) **City of Mississauga**, By-law Number 876-83

Definition

"**Portable or relocatable sign**" shall mean any sign which is specifically designed or intended to be readily moved from one location to another, and which does not rely on a building or fixed foundation for its structural support, and shall include all signs commonly known as "A-board" or "mobile signs."

Regulatory Provisions

"No person shall erect, display or otherwise use a portable or relocatable sign in the City."

"This provision does not apply:

(a) to a person who erects, displays or otherwise uses a portable or relocatable sign which is to be used in conjunction with a special event such as an event sponsored by a patriotic, religious, professional, athletic, charitable or other like organization or the opening of a new business; or

(b) to a person who erects, displays or otherwise uses a portable or relocatable sign where the sign is used as a parking control device and includes the name of the event and the use of this sign has the prior approval of the Peel Regional Police; or

(c) to a person who reopens a business which operates on a seasonal basis provided that the reopening occurs after a closure of at least 60 days and provided the portable or relocatable sign is used only for a period of 30 days commencing from the data of the reopening; or

(d) to a person who is licensed by the City of Mississauga under the Municipal Amendment Act, 1983, Subsection 1(3)"

iv) **City of Scarborough**, By-law Number 15345

Definitions

"**Portable Sign**" means a sign designed in such a manner as to facilitate its movement from place to place.

"**Progressive Sign**" means any two or more signs used in series to convey a cohesive message related to the subject matter, each such sign being dependent upon the other.

Regulatory Provisions

"Every progressive sign, portable sign, bunting or banner is prohibited."

v) **City of St. Catharines**, By-law Number 86-311

Definitions

"**Portable Ground Sign**" means a sign situated on the ground but not permanently affixed thereto and without restricting the generality of the foregoing, be deemed to include signs that may be moved from place to place on wheels.

"**Banner Sign**" means a sign produced on cloth, paper, fabric, or other similar material of any kind, either with or without a frame, and not solidly fixed to the ground or any structure.

"**Real Estate Sign**" means a type of sign that advertises property or premises for sale, lease or rent and may be of any classification defined in this by-law.

"**Temporary Sign**" means a sign or other advertising device coneying a message applicable for a definable and specific limited period of display for holidays, public demonstrations, or charitable organizations which has been approved by City Council and shall exclude any sign otherwise defined in this by-law.

Regulatory Provisions

Mobile or portable ground signs are permitted and are regulated in Section 12 of the sign by-law. Temporary signs and small real estate signs (less than 0.6 sq.metres) are exempt from the permit requirement of the sign by-law. Banner signs are subject to the permit requirement and are prohibited from projecting across any street except by prior approval of the city council.

Special Regulations

1.1 A Portable Ground Sign shall not exceed a face area of nine square metres (9.0 sq.m.) nor exceed a height of four metres (4.0 m.) above the ground level.

1.2 Notwithstanding any other provisions of this by-law, the authority having jurisdiction may cause any Portable Ground Sign to be removed from any location if it contravenes any of the provisions of this by-law, without giving notice to the owner and the owner shall be liable for all expenses incurred in such removal.

1.3 All electrical cables, extensions, wires or outlets of every nature or kind attached to or relating in any way to a Portable Ground Sign must comply with the regulations of Ontario Hydro and the St. Catharine Hydro Electric Commission.

Construction

2.1 A Portable Ground Sign as located on a lot, shall be capable of withstanding the design wind loads established by the Ontario Building Code.

Number and Location

3.1 A Portable Ground Sign shall not be placed on any residential property or on any other than the property to which the sign applies.

3.2 A Portable sign exceeding a height of one metre (1.0 m.) shall be located:
- a) not closer than one metre (1.0 m.) from the property line at any street if located more than forty metres (40.0 m.) from any driveway or;
- b) not closer than two metres (2.0 m.) from the property line at any street if located between twenty metres (20.0 m.) and forty metres (40.0 m.) from any driveway or;
- c) not closer than three metres (3.0 m.) from the property line at any street if located closer than twenty metres (20.0 m.) from any driveway.

3.3 A Portable Ground Sign shall not be placed closer than one metres (1.0 m.) from any property line.

3.4 A Portable Ground Sign shall not be placed closer than 20 metres (20.0 m.) from another Portable Ground Sign, except that a property with less than 20 metres (20.0 m.) of frontage but more than 10 metres (10.0 m.) of frontage may have one Portable Ground Sign.

CONCLUSIONS

Municipalities vary in their approaches to the regulation of mobile signs. The Cities of Cambridge and St. Catharines allow mobile signs and regulate them in the general sign bylaw. The City of Mississauga has a comprehensive mobile sign by-law, separate from the sign by-law; it generally prohibits all mobile signs in the city but lists circumstances under which they are permitted. The Cities of Etobicoke and Scarborough prohibit mobile signs altogether. Total prohibition simplifies the enforcement problem.

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Zoning News, newsletter of the American Planning Association, February, 1988

Occasionally the Research and Special Projects Branch of the Ministry of Municipal Affairs issues brief information sheets on issues of current interest to municipal planners. Planning info-sheets are for information only and do not represent government policy or guidelines. Previous info-sheets have dealt with:
Salvage yards, Bed and Breakfast, Places of Worship, Satellite Dishes and Just in Time Manufacturing.
Future info-sheets are planned on: Video Arcades, etc.

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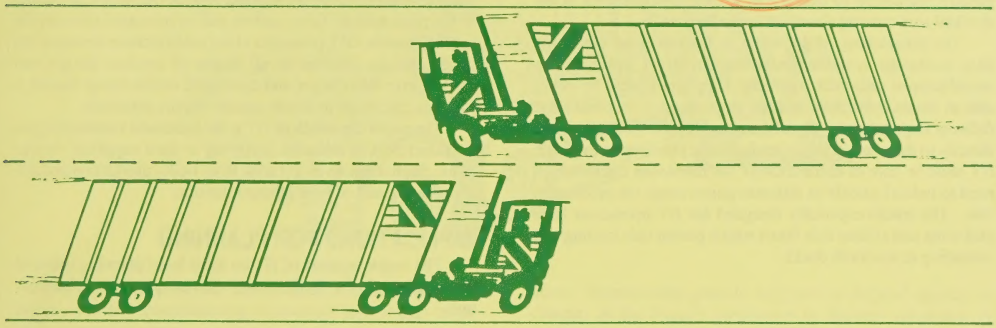
INFO-SHEET 5

Ontario Ministry of Municipal Affairs
John Eakins, Minister

AUGUST 1988

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JUST IN TIME MANUFACTURING



BACKGROUND

The rising popularity of "Just in Time" manufacturing (JIT) in the eighties in North America may lead to significant changes in the way business is conducted in the industrial and commercial sectors of our economy. The acronym JIT is shorthand for a whole approach to manufacturing which emphasizes continuous flow production as opposed to batch processing; it implies smaller product lot sizes, reduced set-up times, reduction of inventory space and flow lines, and worker involvement in improving processes and solving problems.

One important component of JIT is Just in Time delivery, where required materials arrive at the production line just when they are needed. Another component of the whole strategy is an electronic information system which documents production information and is directly linked with suppliers to communicate the most up to date delivery requirements. Current product status is indicated by "kanbans", a Japanese word referring to cards which travel along the production line; hence the motto "No Kanban No Production" is frequently used.

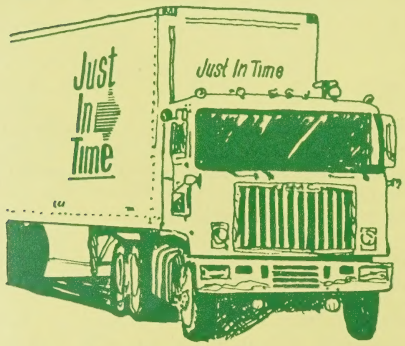
The JIT strategy is already popular in the auto manufacturing industry in Canada and the US. Ford, General Motors, and Chrysler have, to various degrees, implemented JIT in their plants. In addition, Harley-Davidson, Hewlett-Packard, Hoover, General Electric, and Xerox operate on JIT principles. Clearly, the potential exists for JIT to be used in retail industry, especially in the retail grocery business.

With the adoption of JIT by major industries , we can expect changes in the forces at play in industrial location decisions, an issue of concern to those involved in land use planning. This info-sheet provides an overview of the requirements of JIT, as well as its benefits and drawbacks, and discusses its implications for municipal planning.

REQUIREMENTS

Successful implementation and functioning of JIT manufacturing requires, among other things, that the manufacturers maintain excellent working relationships with their suppliers. The suppliers must understand the principles of JIT and be willing to cooperate. With JIT, manufacturers reduce their total number of suppliers, and may show their commitment to a particular supplier by entering into contracts of three years or more. Production schedules geared to maintain a continuous flow in the plant while avoiding a build-up of inventory may require suppliers to make several small deliveries a day. Delivered parts must be defect-free, as in theory the manufacturer does not have a buffer stock to draw from. Further, in auto manufacturing for example, incoming parts may have to arrive already sequenced to match the specific requirements of individual cars moving down the assembly line.

The dispatching of deliveries is facilitated by electronic data exchange systems which create direct ties between manufacturers and their suppliers. Suppliers benefit by being able to obtain immediate updates on production schedules and delivery requirements. Finally, since deliveries must be made directly to the point of use, manufacturing plants operating with JIT must be able to accommodate the numerous trucks which need to unload quickly at different points along the production line. The trucks especially designed for JIT operations have gull-wing and sliding side doors which permit side loading and unloading at sawtooth docks.



BENEFITS AND DRAWBACKS

One of the major benefits of JIT is the cost saving achieved through a reduced or non-existent parts and work in progress inventory, reduced floor space and personpower devoted to inventory, and less material handling equipment. The other major benefit of JIT is a significant saving in time. Without large inventories as buffers, manufacturers can more quickly identify problems in production schedules and machines. Further, with continuous flow rather than batch processing, the time required for the manufacture of an item is greatly reduced, thus increasing customer satisfaction. With an emphasis on improving processes and solving problems, equipment and worker idletime is reduced.

The shift towards fewer suppliers and longer contractual commitments between the supplier and the manufacturer results in the placement of larger orders and in increased demand for quality service. JIT promotes close collaboration between the buyer and the supplier in all stages of product design and fabrication. With larger and consistent orders being placed, a supplier can afford to design quality supply processes.

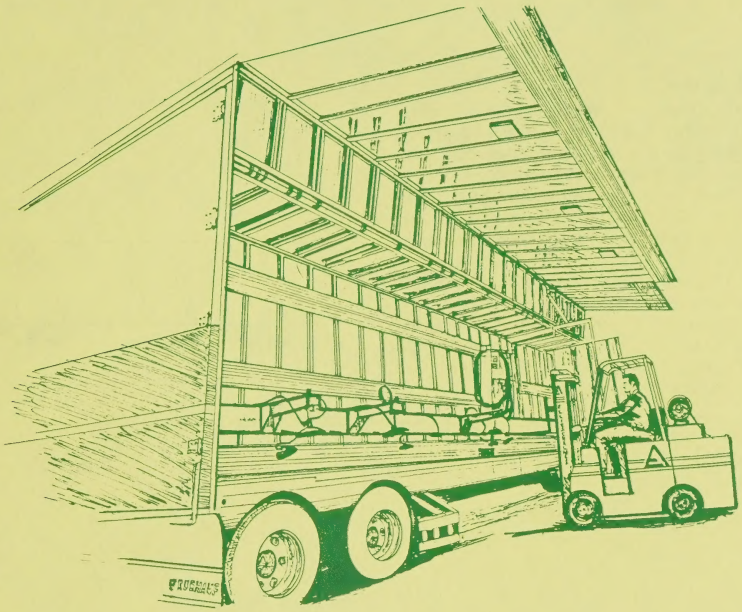
The major drawback of JIT is the increased vulnerability of manufacturers to setbacks occurring in their suppliers' operations. Such setbacks might arise from faulty production processes or as a result of poor labour relations.

IMPLICATIONS FOR PLANNING

The major impacts of JIT on local level planning relate to the location of new facilities and the transportation infrastructure.

Industrial Location and Land Use

Due to the JIT delivery requirements of lighter loads more often, auto manufacturers such as General Motors, Chrysler, and Ford encourage their suppliers to have easily accessible plants. This may mean that certain suppliers are drawn into the same municipality as the manufacturer and locate in a nearby industrial park. Some such relocations have occurred. However, in the literature on JIT, when reference is made to location close to the buyer's plant, the word "close" is generally used in a broad regional or even continental context, as will be clear from the following examples. Forty percent of the automotive parts for the GM autoplex in Oshawa are made within 4 hours travelling time of the plant. The Harley-Davidson Milwaukee engine plant can boast that about 75 percent of its suppliers are located within a 175 mile (292 km) radius of the city's suburbs .



Since JIT promotes the clustering of complementary activities, one JIT manufacturing investment in a region often leads to complementary investments. Further, the concern over the proximity of suppliers' operations to JIT plants means that Canadian manufacturers will be more likely to use Canadian suppliers.

With JIT manufacturing able to encourage suppliers to locate nearby, a sector-specific industrial agglomeration such as Detroit, can be bypassed in favour of greenfield locations in semi-peripheral or peripheral areas. What might be perceived as the natural advantage of an existing industrial agglomeration can still be rendered insignificant in the face of the corporation's power to create an industrial landscape of its own choosing.

Thus, JIT could conceivably lead to a decentralizing of some industries which are critical to the Canadian economy. In practice, however, in the major example to date in Ontario, General Motors of Canada has significantly strengthened its commitment to Oshawa by investing heavily in JIT in that city.

Suppliers unwilling or unable to locate plants near a major buyer often establish warehouses near that buyer's plant. In this case, suppliers may be meeting the manufacturer's JIT requirements without implementing the strategy in their own operations. Warehousing permits suppliers to respond quickly to changes in the buyer's production or delivery schedules. A decision to establish a purely warehousing function in the vicinity of the buyer's plant can lead to a further decision to provide that warehousing in the form of transport trailers. The supplier's presence is then limited to a parking lot. Such a development in an industrial park would have negative implications both from the point of view of municipal assessment and aesthetics.

Transportation Infrastructure

To accommodate JIT transportation requirements, the trucking industry offers more flexibility in delivery schedules and load sizes than railways. As a result, superior road and highway networks rather than good rail connections are a critical consideration in the decision-making process leading to the location of a new JIT plant.

To minimize the congestion which may result from increased trucking, it may be necessary to establish new trucking routes, upgrade existing roads, adjust maximum load restrictions, and regulate the times of day that trucks can use certain roads.

Other Implications

In the absence of extra inventory (just-in-case inventory), any breakdown in the JIT supply system requires emergency procedures to maintain the flow of parts. This may mean shipping supplies via air cargo freight service. Proximity to an airport becomes a particularly important consideration to the manufacturer. Municipal planners should be aware of the possibility of noise problems due to emergency flights, particularly night flights.

The impact of JIT on employment is likely to be a shift in demand from unskilled jobs in warehousing operations to jobs requiring technical expertise to operate the technologically advanced production operation. Overall, the increase in jobs would not be commensurate with the substantial investment that may occur in the implementation of JIT.



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Ontario Ministry of Municipal Affairs
John Eakins, Minister

JUNE 1988

SATELLITE DISHES



A satellite dish is a round, parabolic antenna for the reception of signals from a satellite; its shape and size, ranging from 2 m to 6 m in diameter, distinguish it from a standard television antenna. Large satellite dishes, in excess of 4 metres, are usually for a commercial use such as a broadcasting station.

Dish antennas were first marketed for residential use in 1980 and their popularity has increased rapidly. The price of a standard residential dish decreased significantly (from approximately $6,000.00 to $2,000.00) as improved technology permitted the size to be reduced. However, as more satellites are placed in orbit, interference problems could have the effect of requiring larger dishes to maintain good reception. Design innovations now make it possible to produce flatter dishes; some can be recessed into the roof of a structure and the latest design can be wall mounted and painted to match its background. At least for the present, these special designs are more costly than the standard dishes.

Satellite dishes were soon perceived as a planning problem. An aesthetic concern is immediately obvious. In addition, view obstruction and the shading of neighbouring properties have been cited. The issue has had a particular impact on rural municipalities where cable television is not available. Where cable television is available, the relatively high cost of a dish antenna is likely to make it an uneconomical alternative.

In the planning response to satellite dishes, the distinction between regulation and prohibition is crucial. Consequently, the municipal authority to regulate satellite dishes will be discussed separately from the authority to prohibit them from certain areas.

1. MUNICIPAL AUTHORITY TO REGULATE "DISHES"

The municipal authority to regulate the height, bulk, location, spacing and type of construction of structures is contained in the zoning power in Section 34(1) of the Planning Act, 1983. The legislative competence of municipalities to regulate dish antennae has been questioned because radiocommunications is exclusively in the federal domain. Antennae are governed by regulations pursuant to the Radio Act.* However, the federal Department of Communications has stated that:

* Unlike transmission towers, TV dishes are not subject to a federal licence.

"...a properly framed municipal by-law dealing with local zoning and relating only incidentally to radiocommunications may co-exist with federal legislation provided the by-law neither prohibits nor unduly restricts the conduct of radio services or the operation of federally-licensed radio stations. Thus, municipal by-laws of general application which relate only incidentally to radiocommunication enable municipalities to exercise their authority with respect to land use control." (1)

A study undertaken for the Department of Communications in 1987 (2) adopts the above reasoning and goes on to suggest that, where a strong and compelling local interest exists in the aesthetic character of an area, (i.e. residential, heritage or developed recreational area), a local government may require reasonable accommodations to the siting, painting or screening of dish antennae and their support structures. Such restrictions should be acceptable so long as the operative capacity of the antenna is not restricted or impaired and the cost of compliance is not unreasonable. Generally, the study notes that municipal rules may not limit the height of an antenna system, for aesthetic or any other purpose. However, since height **per se** is not related to the operative capacity of a satellite dish, height restrictions used to refine the siting of a parabolic satellite dish would be an exception to that general principle.

Municipalities seem to have taken two very different approaches in dealing with the concern that their zoning regulations might be deemed an infringement of federal jurisdiction. Some zoning bylaws make no mention of satellite dishes but the assumption is that they are covered under the general term "structures". This approach considers the omission of specific reference to satellite dishes to be the clearest way of showing that the regulations relate only incidentally to radio-communications. The municipal board decision summaries from Wilmot and Hamilton cited in this info-sheet illustrate two different responses to this approach.

The other approach is to include a definition and specific regulations applicable to dish antennas. A few examples of such zoning provisions are given below. The legal decision from Saint Lambert, Quebec seems to support this approach.

2. MUNICIPAL AUTHORITY TO PROHIBIT "DISHES"

Any attempt to prohibit the erection of satellite dishes altogether is likely to be successfully challenged as an infringement on federal jurisdiction. This would be equally true if the prohibition were limited to residential zones.

It is possible that regulatory provisions may be so restrictive that they make it practically impossible to erect a dish antenna, at least on some lots. The distinction between "regulation" and "prohibition" may not always be clear-cut and a challenge to particular zoning restrictions imposed on satellite dishes is always within the realm of possibility.

3. EXAMPLES OF ZONING PROVISIONS

i) City of North York, By-law Number 29467

Definition

'Satellite Signal Broadcast or Receiving Dish' shall mean any device used or intended to be used to send or receive signals to or from satellites."

Regulatory Provisions

TV Dishes are permitted in all zones. On lands in or abutting one-family detached dwelling zones, they may not exceed a height of 16.6 metres. In a one-family detached dwelling zone: "Satellite Signal Broadcast or Receiving Dishes shall be permitted only in rear yards provided such dishes are not located closer to any lot line than a distance equal to the greater of the diameter of the Satellite Signal Broadcast or Receiving Dish or the minimum yards required for a one-family detached dwelling in the zone."

ii) City of Sarnia, By-law Number 8654

Definition

"Satellite Dish" means a device designed to receive communication signals from a satellite."

Regulatory Provision

"An accessory building which is a satellite dish shall not be located within the side yard of a residential property or within that portion of a residential property between the street line and the front wall of the main building on the site and extending across the full width of the site."

iii) City of Niagara Falls, By-law 82-284

Definition

"TV dish antenna means an antenna intended for or capable of being used for receiving or collecting television signals and which has dimensions of not less than the following:

a) where the antenna is circular in shape, a diameter of 1.0 metre,

b) where the antenna is not circular in shape, a width of 1.0 metre, and a length of 1.0 metre,

and includes all mounts and other members."

Regulatory Provision

Accessory Buildings and Accessory Structures:

"... no person shall erect a TV dish antenna in a front yard, an exterior side yard or an interior side yard of any lot in any residential zone, DH Zone or R Zone."

iv) Town of Whitchurch-Stouffville By-law 87-34

General Provisions:

"Dish Antennae

No dish antenna shall be located in a Front or Minimum Side Yard, or at such an elevation that the top of the dish antenna is higher than the Main Building on the lot on which the dish antenna is situate."

v) Township of King, By-law 86-141

Height Exceptions

Notwithstanding the height provisions herein contained, nothing in this by-law shall apply to prevent the erection of...a flag pole...a barn...etc or a television tower or antenna but shall not include a satellite dish within any Urban, Residential Hamlet or Residential Estate zone, or any lot within any other zone used for residential purposes which is 0.8 hectares or less, and such satellite dish shall not exceed 4.5 metres in height.

No objections were raised to any of the above provisions when they were introduced. Consequently, they have not been subjected to municipal board scrutiny.

4. MUNICIPAL BOARD AND LEGAL DECISIONS

TV Dish Antenna not in Contravention of Wilmot By-law

When a resident of the Township of Wilmot erected a television dish antenna in his front yard, complaints reached the municipal office and the owner of the dish was told he had contravened the zoning by-law. He thereupon applied to the committee of adjustment for a minor variance, which was refused.

An appeal from the committee's decision resulted in a municipal board hearing. The board examined the zoning by-law and found that the front yard was defined by reference to the "building line". The board was quite unable to agree with the township that the antenna could be considered a "building" within the definition in the by-law. The township also tried to persuade the board that the word "accommodation" in the by-law included a dish antenna since it "accommodates" the property owners. This didn't wash either. Finally, reference was made to the prohibition of any obstruction in the area between the street and the building line. However, the board noted the lack of a definition for the word "obstruct" and referred to photographic evidence of trees and shrubs throughout the neighbourhood, which were obviously not considered obstructions.

On May 27, 1983, the board dismissed the appeal on the grounds that no variance was required to allow the television dish antenna to remain.

Source: Ontario Municipal Board Reports
Kuhr v Township of Wilmot
15 O.M.B.R. 451

Satellite Dish Antenna in Hamilton Front Yard

A television satellite receiver in the front yard of a Hamilton suburban dwelling was not appreciated by several neighbours, one of whom described the neighbourhood as "a contemporary planned community wherein high standards of residential amenities are the norm". The owner was told that a minor variance was required if the dish was to remain in place and an application was duly submitted. The application was refused and the committee's decision was appealed.

At the Board hearing, the neighbours pointed out that there are no wires or cables visible in their community. The dish was 10 feet in diameter, atop a 5 foot pole, making it 15 feet high. It was described as out of character with the neighbourhood. A satellite dish is not defined in the zoning by-law but the Board deemed it to be an "accessory building", by analogy with such facilities as pumping and filtering facilities and air conditioning or heat pump units. "Accessory buildings" are prohibited from front yards; they are only permitted within a rear yard. The Board referred to the official plan which talks of striving for compatibility within residential districts. The proposed satellite dish location would be a visual intrusion upon the character of the streetscape and would conflict with that intent.

On February 9, 1987, the Board concluded that the requested variance was not minor. The appeal was dismissed.

Source: Decision of the Ontario Municipal Board
Gauthier, City of Hamilton C. of A.
File V 860426

Aesthetically Motivated Restrictions on Saint Lambert Dish Antennae are O.K.

Claude St-Jean was accused of having an illegal TV dish antenna attached to the roof of his house, contrary to article 2.7.6 of by-law 1152 of the Town of Saint-Lambert, Quebec. His defence was based on the claim that the by-law was not authorized by the enabling legislation and that, furthermore, it was an invasion of federal jurisdiction.

A municipal court judge reviewed the Town's bylaw, which differentiates between buildings of less than four storeys and taller buildings. The former are only permitted to have dish antennas in their rear yard, provided the diameter is no greater than one metre. Buildings of at least four storeys are permitted one dish antenna of up to 2.2 metres, either on the roof or in the rear yard. Furthermore, a telecommunications company and any enterprise in an industrial zone is permitted a dish antenna of not more than 5 metres.

The court took note that dish antennae were widely permitted and the by-law only restricted their diameter and their location. It failed to see how this could be unconstitutional. The by-law was clearly not aimed at regulating telecommunications. It did not seem to the court that the by-law had the effect of limiting or restricting the scope of any possible federal regulation.

By limiting the size of the dish antennae and their location on the lot, article 2.7.6 is obviously aimed at protecting the streetscape.

The court went on to decide that article 2.7.6 was clearly authorized by the provincial planning act (**Loi sur l'aménagement et l'urbanisme**) which provides for zoning restrictions bearing on "... architecture, symmetry and the external appearance of buildings and structures; the grouping of buildings and structures on a lot; the exterior building facing materials;"

On July 16, 1986, the municipal court concluded that article 2.7.6 was only aimed at an aesthetic purpose, being part of the section entitled "Architectural Control". It was a valid exercise of the power conferred on the Town of Saint-Lambert by the provincial legislation. The defendant was found guilty. On appeal, the decision was upheld by the Quebec Supreme Court on February 28, 1987.

Source: Decision of the Cour Municipale, Ville de Saint-Lambert
Saint-Lambert v. Claude St-Jean
Files 5-3773 to 5-3777

5. CONCLUSIONS

- Local by-laws may co-exist with federal regulations, as long as the local by-laws relate only incidentally to telecommunications.
- Although some people consider satellite dishes a form of urban sculpture, much of the opposition to them seems to be based on the opinion that they are unsightly. Overt recognition of an aesthetic basis for a municipal zoning regulation is usually avoided in Ontario. Such restrictions are vulnerable to challenge due to the subjective nature of the basis.
- Obstruction of view and other concerns applicable to structures on residential lots are an appropriate basis for municipal zoning regulation of satellite dishes.
- Some municipalities have decided that the best way to deal with satellite dishes is not to mention them specifically but to assume they are subject to any general zoning restrictions applicable to structures.
- Any attempt to prohibit satellite dishes entirely is doomed to failure.
- Problems with TV dish antennas may subside with the growth of cable television and a reduction in the size of future dishes; however, it is conceivable that certain technological developments could have the opposite effect.

References

(1) Letter from the office of the Minister of Communications to Ken Whitbread, Niagara Escarpment Commission staff, November 22, 1983.

(2) Canadian Municipalities and the Regulation of Radio Antennae and their Support Structures.

A study prepared for the federal Department of Communications by Professor David Townsend of the University of New Brunswick Faculty of Law, July, 1987.

Information sheets on issues of current interest to municipal planners are issued by the Research and Special Projects Branch of the Ministry of Municipal Affairs. Info-sheets do not represent government policy or recommended guidelines. Previous info-sheets have dealt with Salvage Yards, Bed and Breakfast and Places of Worship. Future topics include mobile signs, video arcades and "Just in Time" manufacturing.

For information or to suggest other topics, call (416) 585-6244 or write to our Branch at:
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planning issue

INFO-SHEET 3

Ontario Ministry of Municipal Affairs
John Eakins, Minister

APRIL 1988

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PLACES OF WORSHIP



BACKGROUND

While churches have traditionally been seen as an integral part of a community and were among the critical building blocks of new settlements, their location has recently become the subject of controversy in some municipalities. The controversy surrounding places of worship is in part fuelled by changes in the nature of religious organizations over the years and by changing public attitudes.

To respond to the concerns of local residents, some municipalities are increasing their regulation of places of worship, a trend which may have serious long term implications for all religious organizations. This info-sheet focusses on some of the planning issues which surround places of worship, and gives examples of how regulation is achieved through official plans and zoning by-laws. Finally, some legal and OMB decisions are quoted as examples of conflicts and their resolution.

PUBLIC CONCERNS

Although the congregations of many churches still come largely from the community around the church, some of the smaller denominations draw their membership from a wide area. Thus for some residents, it is an intrusion when a particular denomination wants to establish a place of worship in their neighbourhood.

Churches are not only used for religious services but for a variety of other functions. In addition, they may spawn other uses in the immediate vicinity. Although senior citizen apartments, daycare centres, and schools are socially desirable, the increased level of activity in quiet residential neighbourhoods is not always appreciated.

Increased traffic, higher noise levels, visual incompatibility of the required parking lot with the area's residential use, insufficient on-street parking, and a potential decline in neighbourhood property values are often cited by residents as the reasons for their objection to a

proposed place of worship. In addition, the City of Etobicoke's "Church Study" found that residents fighting the conversion of a dwelling into a place of worship were concerned that a potential for vandalism existed due to the proposed isolated rear parking lot. The residents also argued that the increase in impervious surfaces resulting from paved parking facilities would cause adjacent lots to become drainage basins for the church premises.

In North York, residents' concerns about the impact of places of worship in residential areas led to the creation of a Mayor's task force in March 1987 to report to Council. The task force was composed of members of the religious communities, residents' association leaders, members of the public, and members of Council. In October 1987, Council approved the majority of the controls proposed by the task force. Many of the controls are quoted in this info-sheet.

THE RELIGIOUS ORGANIZATIONS' PERSPECTIVE

Religious groups of all denominations are intended to be self-financing. Donations from congregations finance the acquisition of land and the construction and administration of the place of worship. To minimize the costs of land acquisition borne by congregations, many organizations purchase land well in advance of need as part of a long range planning program. Hence the site for a future place of worship is acquired at an affordable price, well before market forces have driven up the cost of land beyond the means of the organization.

Often the sites acquired for places of worship are meant to accommodate other uses related to the goals of the particular denomination. For instance, the Roman Catholic Church, due to its view of community, attempts to locate its churches and schools side by side. Similarly, seniors' residences and daycare centres are sometimes desired next to churches. The facilities and services provided by the religious organizations generally provide benefits to the surrounding community as a whole.

Religious organizations are concerned that increased restrictions may limit their ability to acquire suitable sites at affordable prices and may separate them unduly from the communities they serve.

REGULATING PLACES OF WORSHIP

Official Plans

Official plans generally permit places of worship in residential, commercial, and institutional designations. Existing official plans contain very few limitations on the location of places of worship. Most often, they are only excluded from open space, floodplain, environmental protection and heavy industrial designations.

Official plans may direct places of worship to locate on arterial roads or in concentrations of commercial uses which border neighbourhoods. Policies to promote concentrations of institutional and commercial facilities are not appreciated by religious organizations because these policies force them to compete with businesses for development sites. The resulting financial burden may be prohibitive, particularly for the smaller denominations.

A policy included in the secondary plan for part of Markham and Unionville requires subdivision developers to set aside land for future places of worship. As a result of this policy, about ten sites ranging in size from 1.29 to 2.7 acres have become available. While generally lauding this policy, religious groups are concerned about the size of the sites being set aside, as approximately five acres are usually required to accommodate a place of worship, the appropriate ancillary facilities, and a parking lot.

In order to respond to the parking requirements stipulated in by-laws, religious groups feel that the potential for shared parking facilities must be more widely recognized. A place of worship adjacent to a school or shopping centre for instance does not have the same need for on-site parking as one located by itself in the heart of a residential area. With shared parking facilities, organizations could purchase smaller lots, both a cost saving measure and a means of ensuring efficient land use.

Zoning By-laws

1. Location

There is no consistency in how zoning by-laws across the Province regulate places of worship. In some municipalities, they are only permitted in an institutional zone and/or in commercial zones and sometimes in light industrial zones. This reflects an attitude that places of

worship do not always fit in with residential uses and that their location should be tightly controlled. At the other end of the spectrum are municipalities which permit places of worship in all zones except zones such as Public Open Space or Environmental Protection. This zoning reflects a community acceptance that religious uses are compatible with the other land uses permitted in these various zones.

2. Definitions

"'**Church**' shall mean a building commonly used by any recognized organization for public worship, and may include a rectory, manse, or church hall."

"'**Institution**' shall mean any land, building, or part thereof used by a governmental, educational, or charitable organization in the carrying out of its function, and without limiting the generality of the foregoing shall include churches and accessory buildings, hospitals, schools, community halls, and offices other than those of a primarily recreational function." [Township of Plympton]

"'**Church**' means a building dedicated to religious worship and may include a church hall, church auditorium, sunday school, convent, monastery, parish hall or synagogue." [Village of Ripley]

"'**Place of Assembly**' shall mean any public or private hall, theatre , church, arena, stadium, athletic field, banquet hall, which is designed for the assembly of any collection of persons at any one time."

"'**Religious Use**' shall mean a church, a church hall, or a rectory, manse, vicarage, convent, deanery or clergy house, but shall not include a school, college, hospital, home or clinic." [City of Guelph]

"'**Place of Worship**' shall mean lands or buildings used for worship by an association of persons that is:
i) charitable under the laws of Ontario ; and
ii) organized for the advancement of religion and for the conduct of religious worship, service or rites; and
iii) is permanently established as to the continuity of its existence:
and may include accessory uses such as a residence for a caretaker or head of congregation, and an assembly hall." [City of North York]

3. Zone Provisions

Regulations affecting places of worship generally relate to parking, building and lot size, and buffering features. Urban municipalities often have regulations which only apply to places of worship, while rural municipalities generally regulate them through the more general provisions for institutions except in the areas of parking and maximum height. A sampling follows from zoning by-laws across the province.

Parking

One space for every four seats or 96 in. (2.4 m) of bench space (City of Sudbury)

One space for every five persons that can be accommodated (City of Guelph)

One space for every ten persons
(Former Town of Mimico, now in the City of Etobicoke)

Minimum one space for every forty seats
Maximum one space for every five seats
(Central area, City of Toronto)

One space per 60 sq.ft.(5.6 m^2) of floor area in the nave
(Township of Tiny)

One space per 3.7 m^2 (40 sq.ft.) of gross floor area
(Township of Plympton)

One space per 6 seats, or if no fixed seats, 1 space per 10 m^2 (108 sq.ft.) of floor area devoted to public use
(Township of Ramsay)

One space for each 4.7 m^2 (50 sq.ft.) of floor area devoted to the main area of worship or 1 space for each 28 m^2 (300 sq.ft.) of gross floor area, whichever is greater. All required parking must be located on the same site as the place of worship and are restricted to the rear and side yards. (City of North York)

The City of Mississauga undertook a review of its church parking standards in 1987. The report proposed a standard of 10.5 spaces per 100 m^2 gross floor area, or 25.8 spaces per 100 m^2 of gross floor area devoted to public worship - whichever is greater . This standard accommodates the demand for most places of worship but the report pointed out the considerable variation in parking demand for different denominations. The standard would create an oversupply for some denominations and leave others with barely more than half the parking they need to satisfy the peak demand. Site plan control was recommended as the means to achieve the necessary flexibility, with the parking standard deleted from the by-law.

Minimum Lot Area

A range from 460 m^2 (5,000 sq.ft.) to 840 m^2 (9,000 sq.ft.) in various urban by-laws.

A range from 1,500 m^2 (16,500 sq.ft.) to 2,000 m^2 (22,000 sq.ft.) in rural areas.

Minimum Lot Frontage

A range from 13.5 m (45 ft.) to 25 m (83 ft.) in urban areas and

a minimum of 30 m (100 ft.) in rural areas.

Maximum Height

Where places of worship are a permitted use in residential zones, a provision may be appropriate to permit a church to exceed the normal height limitation. In Sudbury, for example, a church may exceed that limitation by up to 50 %. Also, in most zoning by-laws, church steeples are exempted from all maximum height regulations.

Maximum Gross Floor Area

Places of worship located on arterial or minor arterial roads in residential zones are restricted to a maximum gross floor area of 25,000 square feet (2,322.5 m^2), while those located on local or collector roads are restricted to a maximum gross floor area of 15,000 square feet (1,393.5 m^2).

Minimum Separation Distance

In residential zones, (R and RM), only 1 place of worship per block is permitted, and a proposed place of worship cannot be less than 1000 feet (304.8 m), measured along the street fronting it, from another place of worship. Places of worship on arterial or minor arterial roads are excluded from this count.

Buffering

When the site of a place of worship abuts residentially zoned land, a minimum of 3 metres (10 ft.) of landscaped buffer is required along the outer perimeter of the lot.

(City of North York)



OMB AND LEGAL DECISIONS

A number of recent Ontario Municipal Board decisions illustrate the range of issues facing municipalities today with respect to regulating places of worship. (The number at the end of the summary refers to the OMB file or to a publication in which the decision may be found.)

Court Rules Against School Use of Church Property

In 1985, the Halton Heritage Christian Academy commenced operation as a school. The Town of Milton applied for a declaration that the use of a church property for a private school was contrary to the zoning by-law and requested an injunction to end the school's activities. The problem of differing concepts of a church was at the heart of an appeal made against the Town's application.

A Town of Milton by-law passed in 1969 zoned the property owned by the church group as R-3 which prohibits the land from being used for school purposes. The group, however, interpreted "church" in a theological sense, and as such "a teaching ministry" is inherent. Thus they argued that they had not contravened the by-law.

The Ontario Supreme Court ruled that the theological definition of church could not be used when interpreting the zoning by-law, as the latter distinguished between "church", "private schools", and "schools". The activities of the Halton Heritage Christian Academy fell into the second category and were deemed to be in conflict with the applicable municipal land use regulation. The Court found that the by-law was not intended to restrict the definition of church, rather it was meant to regulate the land use manifested by that concept. Further, the by-law was deemed not to be in conflict with the Canadian Charter of Rights and Freedoms which guarantees freedom of conscience and religion, as the by-law's objective was only to preserve existing property from depreciation. The Court decided that the by-law was blind to church affiliation and that it did not prohibit worshipping at the site. It did, however, regulate where private school activity can be conducted. [32 MPLR 107]

OMB Supports Council Decision Against Church in Residential Area

When the Council of the Township of Delhi turned down an application to amend the zoning by-law to permit a place of worship in a residential area, an appeal was heard by the OMB. The Board considered evidence given by a Region of Haldimand-Norfolk planner that the proposal conformed with the District Plan for the Township. As well, a land appraiser testified that churches do not devalue neighbourhood properties. Objectors to the proposal argued that the place of worship would disrupt the neighbourhood, and that the chosen site was too small to adequately accommodate the place of worship.

The Board concluded that although the proposed place of worship generally conformed with Official Plan policies, it failed to satisfy the compatibility requirement. Specifically, little consideration had been given to the parking and traffic problems that would arise. The Board also noted that due to proximity to a neighbouring building, the proposed facility could not be properly maintained, nor would it have proper emergency access. The New Life Assembly's appeal was dismissed on April 22, 1986 when the Board ruled that the Council's decision had been appropriate. [Z 850121]

Scarborough Mosque Locates Next to Restaurant

In 1985, the OMB approved a Scarborough Official Plan amendment to permit an Islamic mosque and associated facilities next to a restaurant in a commercial zone. In 1986 Kally's Restaurant appealed the decision to the Divisional Court where it was quashed and referred back to the Board. The Board was instructed to determine the compatibility of the proposed land use with the existing licenced restaurant, the impact of the proposed use on Kally's Restaurant's prospects for obtaining liquor licences for future patio and banquet facilities, and whether that potential impact justifies denying official plan and zoning by-law amendments.

In 1985 the Board had relied on the Islamic Foundation's commitment to not oppose future liquor licence applications made by Kally's Restaurant to satisfy concerns over incompatible land uses. In 1987 when the Board addressed the question of land use compatibility, it

ruled that no basic land use incompatibility existed, and the only possible land use impact related to the parking facilities included in the Foundation's proposal. When the evidence of expert witnesses was reviewed, however, the Board concluded that the parking area shown on the site plan could adequately accommodate the projected peak demand for the mid-day prayer on Fridays.

The Board found that the possibility of Kally's Restaurant being refused a liquor licence was so remote that it was improbable and that such a possibility should not be the reason for reversing an earlier decision.In 1987 the Board ruled in favour of the Islamic Foundation, thus confirming its earlier decision. [35 MPLR 300]

Minor Variance Allows Church for Five Years

The Halton United Church Extension Council was granted permission to use mobile homes as a place of worship for five years on a lot zoned for apartments in Mississauga. The Church wanted to use the mobile homes temporarily and build later if the size of the congregation warranted it. The Church's application for a minor variance was granted, but was appealed by the owners of an adjacent lot. The appellants argued that permitting a church on a site zoned for apartments did not constitute a minor variance as the existing zoning did not permit any similar use. Further, they pointed out that their lot would be sterilized, as it would still be under an agreement with the municipality to develop the two lots together and the prospects for selling it were diminished. The Board dismissed the appeal and the Church was allowed to use the lot provided that the five year time limit, a maximum floor area for the temporary buildings, and certain parking restrictions were respected and that an acceptable site plan was provided. [16 OMBR 364]

Etobicoke's Interim Control By-laws Prohibit Places of Worship

Prior to 1985, religious uses were permitted in all residential zones in Etobicoke. The purchase of a large residential lot by the Seventh Day Adventist Reform Movement sent a tremor through the surrounding community. Council became convinced that it might become a trend for small sects to purchase single family dwellings and convert them into places of worship or redevelop the sites for religious use. The preparation of a report on appropriate standards and locations for churches was authorized and interim control by-laws were passed, prohibiting churches from residential areas throughout the municipality.

Following objections by several religious denominations, the by-laws were amended to permit existing churches to expand by up to 10 percent; all but the Seventh Day Adventists withdrew their objections. At the ensuing OMB hearing, the Board noted that the Adventists' proposal conformed to all but one of the standards in the now completed planning report, entitled "Church Study." The Board was satisfied that this one discrepancy was not important and concluded that no useful purpose would be served in making the appellant apply for a minor variance or zoning change. The Seventh Day Adventist property was exempted from the interim control by-laws and the by-laws were then approved. [19 OMBR 122]

Interim Control Prohibits Places of Worship on Urban Fringe

In 1986, the Town of Markham passed an interim control by-law which specifically prohibited a place of worship, a cemetery, a medical clinic, an elementary school and a high school from the rural area adjoining the developed part of the municipality. The by-law was initiated in response to concerns that the existing zoning did not reflect the rural policies of the official plan, because these uses did not primarily serve the needs of the local farm population. The underlying concern was that development proposals were being received for these uses, scattered in the rural area, diminishing the rural viability of the area and increasing pressures to expand the urban boundaries. Their chosen location could prejudice the orderly land use pattern of the eventual urban development. A study of these issues was initiated when the interim control by-law was introduced.

The municipal board heard several appeals against the by-law, including one from a community of people from the Gujarat province of India, which had acquired a site for a temple in the area. It was learned at the hearing that three other churches had received exemption from the by-law because their applications for development were already before the municipality when the by-law was passed.

The Board found that proper planning principles underlay the interim control by-law and, on February 24,1987, it dismissed both the appeals and the appellants' request. [20 OMBR 51]

Vacant School Proposed for Religious Use

In Woolwich, residents appealed a 1986 Council decision to permit the Kainonia Christian Fellowship to turn a vacant elementary school into a place of worship, a school, and a recreational facility. The site is located at the intersection of two regional roads. Local residents opposed the rezoning, citing concerns related to traffic congestion, safety, devalued properties, and a possible retardation of further development. Further, the residents argued that water pollution from undesirable on-site activities might occur, as might a depletion of water resources due to an increased number of people using the site. Testimony from the planning director indicated that the proposed use conformed with the Official Plan and that the area was already one of mixed uses. The Board dismissed the residents' appeal. [R 860155]

Minor Variance to Ease Parking Requirements Denied

In 1986, the Church of God of Prophecy appealed a decision of the Committee of Adjustment in East York to the OMB. The Church had applied for a minor variance that would reduce the parking requirement for places of worship. The Church, located in a strip of three commercially-zoned enterprises had only two parking spots although the by-law required 26. The surrounding residential area was largely single family residential and little off-street parking was available. The Board noted that a grocery store manager some six blocks away had offered his parking lot for church purposes. The offer, however, was unenforceable and the Board concluded the request was in fact not minor. The appeal was dismissed. [V 860194]



CONCLUSIONS

In response to residents' concerns, municipalities are increasingly introducing additional restrictions on places of worship. Their acceptance throughout residential areas is clearly diminishing. Municipalities are adopting policies designed to prohibit places of worship from locating on local streets and to encourage them on arterial roads and in commercial areas. Parking is seen as a major concern and increased parking requirements for places of worship are invariably considered.

Although the overall effect of increased restrictions on places of worship will not be known for some time, new regulatory measures may put the present-day concept of religious organizations in jeopardy if denominations can not find suitable and affordable sites for their places of worship. Some of the issues which need to be looked at during the policy development process include:

- Are the regulatory measures being applied to places of worship going to have an impact on religious institutions which will make it impossible for them to function effectively and provide the services expected of them?
- Are municipalities willing and able to fill the void created if religious organizations are reduced in their capacity to provide traditional social service programs?
- Do municipalities have a responsibility and a role to play in facilitating the task of locating places of worship? If they do, how can this best be achieved?
- What alternatives to the traditional church facility are available to meet the needs of religious groups while responding to public concerns? To what extent can two or more denominations or congregations share a place of worship?
- Is it reasonable to accept reduced parking for places of worship located near shopping centres or other parking lots associated with commercial uses ? Would Sunday shopping alter the answer to that question ?

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planning issue

INFO-SHEET 2

Ontario Ministry of Municipal Affairs
John Eakins, Minister

FEBRUARY 1988

BED & BREAKFAST



INTRODUCTION

"Bed and Breakfast" is a form of short term accommodation for travellers, provided in private homes. Typically, the accommodation is not totally self-contained; the bathroom and breakfast facilities are likely to be shared with other guests and/or with the host family. The term "guest home" or "tourist home" was commonly used in the past, but "Bed and Breakfast" is currently the more popular name. It has long been a common tourist facility in Europe and has become increasingly popular in North America in recent years.

B&B has certain characteristics in common with boarding or lodging houses, tourist homes, country inns and small hotels, but can be distinguished from each of these forms of accommodation. Whereas a B&B operation is clearly tourist-oriented, a boarding or lodging house can also cater to residents of a community or transient workers whose stay is likely to be measured in weeks or months rather than days. In distinguishing between a small country inn and a B&B establishment, the number of bedrooms and the relative importance of the dining facilities are likely to be key elements; a B&B is limited to catering to its residents.

An important feature distinguishing B&B operations from some of these forms of tourist accommodation is that the primary function of the property is as a single family dwelling, with the B&B operation being a complementary use.

PLANNING CONCERNS

The planning concerns regarding B&B operations flow from their normal location in residential areas. B&B includes a commercial component - it is a home occupation - and its commercial characteristics are a source of potential conflict in quiet residential neighbourhoods. Many operators of B&B establishments are motivated by their enjoyment of the social rewards of receiving guests as well as by the extra income. By contributing to the region's attraction as a tourist destination and providing a convenient source of income for homeowners, B&B benefits the entire community. These positive aspects will, in many situations, be deemed to outweigh any possible negative impacts.

Potential problems which have been raised by some members of the public concern depreciating real estate values, increased automobile traffic, lack of parking spaces, the use of advertising signs which give the neighbourhood a commercial atmosphere, and rowdy guests disrupting the neighbourhood. The likelihood of such problems occurring can be greatly diminished by the adoption of zoning by-laws which clearly define the term B&B establishment and provide appropriate regulations. Existing regulations focus on limiting the number of rooms used and/or guests permitted at one time and the minimum number of parking spaces required.

The nature of B&B establishments is such that any requirements necessitating more than minimal investments are likely to prove discouraging. In many single family residential neighbourhoods, the lot sizes will not readily permit additional off-street parking. The adoption of stringent standards could be a very significant deterrent to potential B&B operators.

REGULATING BED AND BREAKFAST

Official Plans

Almost all existing official plans fail to distinguish B&B as a land use separate from a lodging house or any other form of tourist accommodation. The use is simply not mentioned, probably because B&B had a very low profile when the documents were drawn up.

The City of Cambridge is one municipality that has adopted an official plan amendment specifically addressing the subject of B&B establishments. Amendment number 16, adopted in 1986, contains the council's policy "to encourage the provision of small-scale low-cost accommodation for tourists and other visitors to the city ". The location of B&B's is limited to certain designated areas of the city, including many residential areas.

The Town of Brighton also refers to B&B in its official plan, permitting the use within low density residential areas.

Zoning By-Laws

As with official plans, existing zoning by-laws, for the most part, have not recognized or provided specific provisions for B&B's. However, some existing definitions of similar uses fit B&B establishments. To illustrate this point, the Township of Burford's definition of a boarding or lodging house can be compared with how the Village of Grand Bend defines a B&B establishment:

> " 'Boarding or Lodging House' means a dwelling house containing not more then 4 guest rooms used or maintained for the accommodation of the public, in which the owner or head lessee supplies, for hire or gain, lodgings with or without meals for 3 or more persons but does not include other establishments otherwise defined or classified herein."
>
> [Township of Burford]

The problem for B&B's is that the above use is not permitted in most residential zones. The following definition of a B&B in Grand Bend limits the number of guest rooms to two; the use is permitted in most residential zones.

> " **'Bed and Breakfast Establishment'** shall mean a one-family dwelling in which no more than 2 guest rooms are made available for the temporary accommodation of the travelling or vacationing public. Such an establishment may offer light meals to those persons temporarily residing at the establishment. A Bed and Breakfast Establishment shall not include a restaurant or a Tourist Establishment."
>
> [Village of Grand Bend]

A proposed amendment to the City of Toronto zoning by-law distinguishes between B&B and a tourist or guest home. The latter is normally restricted to commercial or mixed use districts.

> "**Bed and Breakfast establishment** means the letting of a portion of a one-family dwelling house with or without meals to members of the travelling public;"
>
> "**Tourist or guest home** means a building originally constructed as a one-family dwelling house so altered as to contain one or more dwelling units for use of the proprietor or operator, and one or more 'dwelling rooms' used for lodging the travelling public;"
>
> [City of Toronto]

When B&B is specifically recognized, it is likely to be more stringently regulated than a rooming house, in recognition of the fact that it may be permitted within residential neighbourhoods where rooming houses are excluded. A frequently included provision states that the owner and operator of the B&B establishment must also be an occupant of the private dwelling. This is one provision which helps to ensure that B&B remains a home occupation and does not take on a more predominantly commercial character.

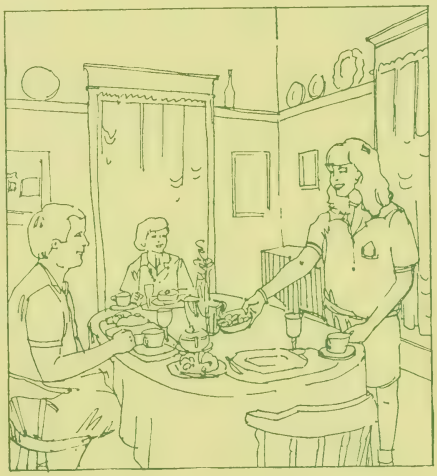
If a municipality regulates a "home occupation", the definition may be sufficiently general that a B & B establishment would be included. In considering the need to regulate B & B, the adequacy of existing regulations should be reviewed and care should be taken to ensure that it is clear which provisions , if any, under "Boarding or lodging house " or "Home occupation" apply to B & B.

The most important clauses regulating B&B establishments are those which restrict their location and size. They may be permitted only in certain zones, or they may be permitted throughout the municipality, except for certain defined areas, usually the most exclusive residential areas. B&B operations are normally limited to single family dwellings. The size limitation usually appears in the definition and is expressed as a maximum permitted number of guest bedrooms, which is typically either two or three.

Parking space requirements are also an important restriction on the development of B&B establishments. A typical standard is one space for every room rented in addition to the space(s) required for the occupant of the dwelling. In order to minimize the impact of increased parking, some by-laws require planting strips to screen parking areas and allow parking behind the building.

In order to maintain the character of their residential neighbourhoods, some municipalities attempt to prohibit exterior alterations. However, any alteration in compliance with the provisions applicable to single-family dwellings could not be prohibited for a B&B operation. Advertising signs may be prohibited or may be restricted in size. The Town of Southampton, for example, permits only a plate or a sign that is attached to the dwelling and does not exceed 0.2 square metres.

Attempts have been made to regulate the time of day meals are served to guests and to prohibit the serving of alcohol. Such references are out of place in a zoning by-law but a provision limiting the serving of meals for gain to guests only may be appropriate.



To assist in enforcing compliance with zoning by-laws and to uphold the quality of B&B establishments, some municipalities require that operators obtain a licence. The licence also provides a means of keeping track of B&B establishments in the community. The authority for licensing lodging houses is contained in Section 208(61) of the Municipal Act, 1980.

A certificate of occupancy is an other tool for keeping track of B&B's. Section 34(6) of the Planning Act, 1983 contains the authority for requiring a certificate of occupancy. Neither a licence nor a certificate of occupancy may be refused if the use conforms to the applicable by-laws of the municipality.

Other Regulatory Agencies

The classification of "Tourist establishments" in Regulation 936 under the Tourism Act excludes a "tourist home". B&B establishments are therefore not governed by provincial licensing requirements.

Regulations of three other government agencies have an influence on the development of Bed and Breakfast operations: the Ministry of Health, the Fire Marshal's office and the Ministry of Revenue.

The Health Protection and Promotion Act, 1983 sets forth regulations concerning food premises and handling. A boarding house is exempt from the regulations if it provides meals for fewer than 10 people. This may serve as an incentive for B&B's to remain small in order to avoid the detailed level of regulation.

Article 9.3.1.1 of the Ontario Fire Code states that the boarding, lodging or rooming house category of the code only includes establishments where lodging is provided for gain for more than three persons. B&B establishments may seek to remain outside this category in order to avoid having to comply with extensive safety requirements.

A further incentive to limit the size of a B&B operation is provided by the Retail Sales Tax Act, 1980. Section 1 (24) defines transient accommodation. A lodging house providing accommodation for fewer than four tenants is excluded from the definition and is therefore not subject to the five percent tax applicable to transient accommodation. Retaining a residential status under the Assessment Act is also a consideration. With more than 5 bedrooms for rent, a B&B could become a "hotel" and be subject to a business tax.

CONCLUSIONS

- The existence of Bed & Breakfast facilities is, in general, an asset to a community.
- The natural habitat of B&B is in a single family dwelling; some of its characteristics have a potential to disturb the character of a residential neighbourhood.
- To benefit from the asset, municipalities should seek to provide opportunities for B&B to locate within their boundaries. Zoning standards should be adequate to protect the neighbours but not so restrictive that B&B is effectively discouraged. A combination of provincial standards and reasonable municipal controls can ensure that the potential for serious disturbance is never realized.

This is the second in a series of information sheets on planning issues published by the Research and Special Projects Branch of the Ministry of Municipal Affairs. These "info-sheets" are for information but do not represent government policy or recommended guidelines. Future info-sheets are planned on video arcades, places of worship, mobile signs, "Just in Time" manufacturing, satellite dishes, etc. For information, call (416) 585-6244 or write to us at:

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PLANNING ISSUE

INFO•SHEET

Ontario Ministry of Municipal Affairs
John Eakins, Minister

SERVICE STATIONS

LIBRARY



"A gas station in S..... with five pumps also sells pizza, offers pinball machines and caters the Lakeland High School junior prom. But it can't repair a fan belt." *Canadian Business November 1979*

INTRODUCTION

This information sheet focusses on the changed role of service stations in the last two decades and provides examples of some regulatory responses. Observed trends include a decrease in the total number of gas stations and an increase in the average number of pumps at new gas stations (12 or more pumps instead of 4 or 6); these changes reflect a move away from small, neighbourhood operations to large stations at major intersections.

Several issues have been identified:

A. The Trend to Self-Service

During the 1970's a trend from full-service to self-service stations became evident. The change is a very visible example of the impact of improved technology on our way of life and it is not universally welcomed. Self-service de-personalizes the event of filling up and causes a loss of jobs for people who have limited alternatives. Stated concerns usually refer to reduced consumer safety, inconvenience and a lack of service and car maintenance.

All proposals for self-service gas stations are required by the regulations under the Gasoline Handling Act to be approved by the Ministry of Consumer and Commercial Relations. Standards are administered by that Ministry's Fuels Safety Branch. Since 1973, the Ministry has made municipal approval a prior condition to consideration for provincial approval. Zoning is used by municipalities to control the location of self-service operations and in some cases it has been used to prohibit them altogether.

However, the initial resistance to the introduction of self-service gas stations has waned as the safety concerns have been addressed and self-service is now widely accepted.

B. Gas stations are no longer Service Stations

Before the advent of self-service, the term full-service was associated with a gas station that provided gasoline and a complete range of automotive repairs. Increasingly, repair shops and gas pumps have been split into two different operations carried out at separate locations. The trend is for cars to need less frequent servicing but servicing is increasingly complex and dependent on specialized equipment and personnel. Automobile repair has entered the realm of specialized services performed either at car dealers or at repair shops dealing only with mufflers, transmissions, brakes, auto glass, radiators, etc. A recent survey in Mississauga determined that fewer than 20% of the service bays in the municipality were associated with gasoline dispensing facilities; the largest number (24%) were at car dealerships.

C. Twenty-four Hour Service

Twenty-four hour operation maximizes the convenience to service station users but significantly increases the potential for service stations to be incompatible with any residential development in the vicinity. It also tends to favour stations owned by large oil companies at the expense of small operators, providing the traditional full service.

D. Mixed Uses

Supplementary commercial uses at gas station sites frequently include convenience stores, fast food restaurants, car washes or video rentals agencies. One concept being tested by a major oil company is called One Stop: it 's a 24 hour combination self-serve gas outlet, customer-operated car wash, mini-store and bank automatic teller. Concerns exist that such a mixture of uses could cause problems. One source of concern is the impact that the supplementary uses could have on existing businesses in the community.

E. Vacated Gas Stations

As the total number of gas stations declines, vacated sites become available and an alternative use is sought. The vacated sites are likely to be situated in neighbourhoods rather than at arterial intersections and potential users of the site may not be compatible with surrounding development. Used car lots and automotive repair garages are among the most common of the uses seeking to establish when a gas station use is discontinued. To avoid unpleasant surprises, the existing zoning of service station sites should be checked to determine whether such incompatible uses are permitted.

REGULATING SERVICE STATIONS

In response to the above concerns, several municipalities have adopted policies and regulatory measures. A sampling is given for other municipalities to consider.

In attempting to identify different uses associated with gasoline dispensing and automobile servicing, a distinction can be made between various automobile service uses and also between associated commercial uses serving people rather than the vehicles themselves.

The first group usually includes:

1) a gas bar; 2) a service station; 3) a car wash; 4) a body shop; 5) a public garage; 6) other auto service uses (e.g.muffler shop,transmission shop)

The second group can include:

1) a convenience store; 2) an eatery (restaurant, donut shop); 3) a bank machine; 4) video and pinball games; 5) other commercial uses

The impact of a particular application could differ considerably depending on the combination of the above uses being proposed.

A. Policies

The **Durham Region** official plan includes the following locational criteria for service stations:

a) in the opinion of the local Council, the location does not create a nuisance to an adjacent residential area;

b) they are located on arterial or collector roads and there is access from these roads; and

c) the location is not adjacent to or opposite a school.

A number of local municipalities have recently studied the subject and adopted policies. This info-sheet relies particularly on information gathered from Pickering, Mississauga and Burlington.

The **Town of Pickering's** policy on retail gasoline outlets was adopted as official plan amendment no. 33 in 1988. It provides for tight control by rezoning for each application , which must conform to a number of criteria. Access is restricted to arterial and collector roads, except that a secondary access for a gas bar may be from a lesser

road. The number of outlets is limited to 2 within a 100 metres of an intersection, preferably at diagonally opposite corners, plus 1 on each side of the street between intersections. Various design criteria are listed. Other commercial uses may be permitted on the same site provided they meet certain criteria. Mechanical car washes are specifically excluded from consideration for location within or adjacent to residential areas.

Pickering's model zoning categories distinguish between gas bars and service stations and between these uses with and without a particular type of car wash: (manual or mechanical). These categories are used in drafting site-specific zoning amendments.

The guidelines produced by the **City of Burlington** in 1988 deal with the conversion of service stations to combination gasoline dispensing/convenience store uses. Such conversions, as well as proposals for such new combined uses, are subject to control through rezoning. Only corner lots are considered potential sites; a minimum frontage is specified: 45.7m on streets with less than 26m in width and 48.7m on wider streets. Conversions will not be supported where the site abuts residential uses on two or more sides. The maximum floor area of any convenience or other single use is set at 278.8m² and the maximum total building area is 557.6m², in addition to the service station building. The intention is to ensure that the permitted commercial development does not rival the area's planned plazas. Restaurant use is discouraged and will only be considered when no residential zoning abuts. Limited food sales from a convenience store are permitted provided there is no seating. Video games and pinball machines are specifically prohibited, but not video rentals. A number of matters are listed which may be considered in imposing site restrictions. One such condition is: "no outside display of goods or supplies except as allowed for the service station use."

In recognition of the dual nature of a converted service station and the high vehicle turnover expected, special emphasis is placed on traffic and parking concerns at the site plan review stage and 9 criteria are listed. Litter control is also highlighted as a concern in a separate list of criteria dealing with waste receptacles and fencing.

Burlington has created new zoning categories for the combined uses, in the section on zoning definitions. Each



successful application results in a site-specific rezoning which limits the use to one of the three types defined.

Mississauga's detailed 1988 review of "Gasoline Dispensing and Automobile Service Uses" has led to a number of proposed amendments to that municipality's official plan and zoning bylaws. Many of the policies are similar to those described above. The subject uses are encouraged to locate at major intersections except where such locations are important in terms of the city's image, area character, streetscape or significant natural features.(Several of these exceptions are listed as examples.) Gas bars are discouraged as single uses at important intersections. Convenience retail and personal service uses up to a maximum gross leasable area of 130m2 are permitted in conjunction with gasoline dispensing uses provided they satisfy certain criteria. The market impact of each proposal is a prime concern. Bank machines are specifically mentioned but restaurants are discouraged and "a restaurant connected with and forming an integral part of an automobile service station" has been deleted from the list of permitted uses in certain highway commercial zones. The concern is particularly with convenience restaurants and donut shops which can be incompatible in residential districts, particularly because of their traffic impact. Applications for restaurant uses are considered on their individual merits. All types of car washes are excluded from consideration in highway commercial locations in residential districts.

Mississauga's design guidelines for highway commercial uses are applied to ensure that developments harmonize with neighbouring uses. In a statement of official plan policy, the integration of gas dispensing developments with commercial centres of all kinds is encouraged.

Following a study of service station development standards,the **City of Scarborough** produced a design brief on service stations. These standards have been adopted for application upon site plan approval.

B. Zoning Definitions

Automobile Gas Bar means a building or place:

i) where gasoline or other motor fuels and oil are kept for sale and for delivery directly into a motor vehicle, and

ii) does not include an automobile service station, a public garage or a car wash.

Town of Vaughan

Automobile Service Station means a building or place:

i) where gasoline or other motor fuels are kept for sale and for delivery directly into a motor vehicle, and

ii) for the actual performance of minor running repairs essential to the operation of motor vehicles and for the sale to the motoring public of goods usual to the trade, but

iii) does not include a motor vehicle sales establishment, a public garage, a car wash or an automobile repair shop.

Town of Vaughan

Automotive Retail Store means a building or part of a building primarily engaged in the retail of vehicle parts, accessories and tools where accessory uses may include service bays for performing specialized automotive related work, but does not include autobody repair work or paint work.

Town of Vaughan

Garage, Public means a building which is used for the care, repair or equipping of motor vehicles but does not include an auto body repair shop or a motor vehicle sales establishment.

Town of Vaughan

Automobile Repair Garage and Body Shop means a building or place where mechanical repairs to motor vehicles are carried out or where minor alterations are made to motor vehicles or where structural changes or repairs are made to the bodies of motor vehicles.

City of Mississauga

Car Wash means a building used in whole or in part for the operation of automobile washing equipment with a capacity greater than 10 cars per hour.

City of Mississauga

Manual Car Wash means an establishment where self-service facilities are provided for the washing and cleaning of vehicles by hand labour methods using sprayers, vacuums and other similar devices.

Town of Pickering

Mechanical Car Wash means an establishment where facilities are provided for the washing and cleaning of

vehicles using production line methods employing mechanical devices wholly enclosed within a building.

Town of Pickering

Motor Vehicle Gas Bar/Food Store-Convenience means those outlets involving pump island(s) to dispense motor vehicle fuel, with or without a kiosk, and one food store-convenience. In these types of operations, no service bays are permitted.

City of Burlington

Motor Vehicle Service Station/Food Store-Convenience has the same definition as Motor Vehicle Gas Bar/Food Store-Convenience except that service bays are permitted for carrying out running repairs to customer vehicles.

City of Burlington

Motor Vehicle Service Station/Food Store-Convenience/Commercial means those outlets having pump island(s) to dispense motor vehicle fuel, with or without a kiosk, one food store-convenience, and may have the following commercial uses, either attached to the food store-convenience or free-standing:

-dry cleaners
-photo processors
-motor vehicle parts and accessories provided there is no installation
-hobby shops
-camera and photographic supplies or services
-travel agency
-video rentals excluding any pinball or electronic game machines on the premises

This type of use does not include motor vehicle repair garages or car washes but can include service bays.

City of Burlington

The **Ontario Petroleum Association** has recommended the following definitions:

A **Gas Bar** is a retail place of business whose primary function is the sale of automotive fuels and products.

A "**Service Station** is a retail place of business, the prime function of which is the sale of automotive fuels and products and/or providing repair service and maintenance to motor vehicles, excluding body and fender work."

The above definition makes no distinction between a service station and a repair garage.

D. Other Regulatory Instruments

In addition to the usual planning instruments applicable to land use, there is specific reference to licensing, regulating and governing the owners of service stations in the Municipal Act (Section 210,subs.151). Section 212 of the same Act deals with the regulation of closing hours. Subsection 152 of Section 210 was repealed in 1988, it provided for limiting the number of service stations and public garages. Henceforth, such limitation can only be achieved through the zoning process.

The definition of a service station in Section 210 of the Municipal Act corresponds to the traditional concept:

An **Automobile Service Station** means a building or place where gasoline, oil, grease, anti-freeze, tires, tubes, tire accessories, electric light bulbs, spark plugs and batteries for motor vehicles are stored or kept for sale, or where motor vehicles may be oiled, greased or washed, or have the ignition adjusted, tires inflated or batteries charged, or where only minor or running repairs essential to the actual operation of motor vehicles are executed or performed.

Regulations pursuant to the Gasoline Handling Act deal with safety concerns associated with self-service stations.

MUNICIPAL BOARD DECISIONS

Controversial Redevelopment of Aylmer Service Station

When the Town of Aylmer adopted a new official plan, the most contentious element referred to the O.M.B. was a proposal to permit a donut shop and gas bar on a site which had been used as a service station for many years. It had been abandoned for some years and the pumps and tanks removed. The existing zoning was B2, permitting a service station and associated coffee shop but not a retail store.

The subject site was at the intersection of Talbot Street (Highway 3) and Elm Street, a major access to the town's industrial park. The area had been designated General Commercial in the new plan, permitting the proposed use, but opposition from nearby residents took the issue to the Board. In response to the opposition, the council had decided to change the designation in the

general area to Office/Residential but still proposed to allow "a coffee shop,donut shop, variety store and gas bar" by a special provision. The opponents felt there was no need for one more gas bar and variety store. They claimed there were about 13 gas outlets within a 3 kilometre radius and eight or nine convenience stores in Aylmer, including one diagonally across the corner. Particular concern was expressed that a donut shop would likely be a 24-hour operation.

Two planners gave evidence in support of the application. They explained that the corner was extremely busy, especially with truck traffic, and was unsuitable for residential use. The site was next to the very active "Mission Church", which had erected portables to accommodate its many activities.

The Board agreed with the municipality's intent but made some modifications to clarify that a gas bar, a donut shop and a coffee shop were permitted on the subject site but not normally in the Office/Residential designation. A variety store was deleted from the permitted uses. On May 31, 1988, the Board agreed to approve the modified bylaw and official plan designations, subject to prior approval of a site plan to provide some protection to surrounding residents.

Source: O.M.B.file R 870226 re Bylaw 50-86 etc.

Propane Tank in Hamilton Residential Area

An application for a minor variance to erect a propane tank on a pump island of a public garage in Hamilton was opposed by 30 neighbours. The owner wanted to fuel a fleet of 35 taxis which had been converted to propane. The property was zoned General Commercial, which permits a wide range of activity, including an automobile service station. The only reason a variance was required was the existence of a clause in the bylaw prohibiting the erection or extension of any building or structure except in accordance with a site plan annexed as schedule "A" to the bylaw. This clause had been included because the property was surrounded by residential uses.

The application was refused by the committee of adjustment and appealed. On July 14, 1986, the municipal board upheld the committee's decision, finding that the erection of such a large tank could not be considered a minor variance in a neighbourhood of single-family dwellings.

Source: O.M.B. file V 860126 re 115 Sanatorium Road

Service Station Conversion Opposed in Pittsburgh Township

The proposed conversion of a service station along Highway 2, east of Kingston, to a gas bar, convenience store, take-out restaurant and pizzeria, was opposed by some neighbours. When the Township of Pittsburgh adopted a rezoning to permit the change, the neighbours appealed and a municipal board hearing resulted.

The objectors' prime concern was the absence of any restriction on the hours of operation; council was not in the habit of imposing such restrictions and had not been willing to do so in this instance. The objectors were all long time residents and their evidence was that they had co-existed well with a motel, nursery and service station for over 20 years without problems. The customary hours of operation of those uses had been limited to the daylight hours; even the motel was either not busy in the winter or was full in the summer by 6 p.m..The proposed change, with the businesses staying open till 1 a.m., was seen as a change to the character of the neighbourhood, which would adversely impact their quiet enjoyment of rural living.

The Board observed that the official plan included a statement that "all new development will be designed and constructed so as to blend in and be compatible with existing development...". It found that the real impact of the proposal on the adjacent residential area had not been satisfactorily addressed by the municipality. No evidence was led by any of the supporters of the bylaw to demonstrate that the objectors concerns were unfounded. The statement by the owner's counsel that it would be commercial suicide to agree to any limitation of hours was not reassuring to the neighbours or the Board on the question of impact or compatibility. The township planner had supported the change but had recommended that council consider restrictions on the hours of operation.

The appeal was allowed on March 4, 1988.

Source: O.M.B. file R 870466 re bylaw 36-87

Other Service Station Decisions

A 1986 decision in Mississauga dealt with a minor variance to a zoning restriction on the hours of operation of a gas bar. The Board felt this restriction was not appropriate in a zoning bylaw but dismissed the appeal against a refusal to allow 24-hour operation on the grounds the total deletion of the restriction was not a minor variance. (V 860140)

In 1987, the addition of a natural gas refuelling station to a service station in North York was opposed by the former service station operator, who lived next door. The Board agreed with his concerns for safety, noise, appearance and loss of property value; the variance was not deemed minor. (V 870149)

A 1987 appeal against Vanier's interim control by-law was prompted by a major oil company's desire to redevelop a service station to a "Mr.Lube" oil change facility and a self-service gas bar on the city's main drag. The City's explanation that it had established a Business Improvement Area and was in the process of planning to revitalize Montreal Road satisfied the Board, which dismissed the appeal. (R 870250)

In the village of Cardinal, a 1988 appeal against a gas bar with underground propane tanks on landfill was successful. The Board found the concerns about the stability of the soil to be unsubstantiated but the council had not applied the official plan policy requiring it to satisfy itself that new development would not adversely affect existing commercial use in the village. (R 870477)

CONCLUSION

The changes that have been occurring in the last few years have raised the awareness of automobile servicing as a planning issue. Municipalities in the vanguard have anticipated potential problems by refining their policies and regulations. Design has been recognized as an important element in making service stations compatible with their surroundings. Solutions applicable in one municipality are not necessarily appropriate in other places but this quick overview may be useful to any municipality considering the need to review its policies.

POST-SCRIPT

A Look at the Future

Service stations have undergone significant changes in the last quarter century. We should not be surprised if even greater changes occur in the future. One such change is suggested by the following item from the March 1989 issue of "Public Innovation Abroad".

Gas Station Robots?

A working group established by Japan's Petroleum Energy Center is pursuing the design of robots to streamline the operation of filling stations. (Unlike Europe and the States, self-service gas stations have not been introduced in Japan, where fire laws require that flammable substances be handled only by qualified personnel. Prospects are dim that the law would be changed to allow self service stations to operate.)

Gas station robots, however, are already on the drawing board, largely due to intensified competition among the major oil companies following deregulation and the removal of production quotas for gasoline. Plans for the full service robots call for them to identify the type of car, take instructions as to the amount of gas a customer wants, remove gas tank caps, pump the appropriate amount, and handle cash or credit cards in payment. For cars whose gas tank covers must be released from the inside, the robot will request the driver, in a female voice, to release the latch.

The project team, which has mastered the basic technology, is now said to be working on robot self-diagnosis to deal with system malfunctions. Mistakes, such as a hose nozzle missing the mouth of the tank and spilling gas onto the car surface and the ground, before the supply is cut automatically, could be very hazardous and costly. "We will take hazard control measures that are more than adequate", said a Center spokesman, quoted by Japanese press sources. "We want to develop a system that will be able to diagnose itself, that will be able to spot potential breakdowns before they happen, and that will be able to repair simple problems on its own."

Information sheets on issues of current interest are issued by the Research and Special Projects Branch of the Ministry of Municipal Affairs. Planning info-sheets are for information only and do not represent government policy or guidelines. Previous info-sheets have dealt with salvage yards, satellite dishes, bed & breakfast, places of worship, just-in-time manufacturing and mobile signs. Video arcades will likely be the next subject in the series.

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Les documents d' information sur des questions actuelles sont publiés par la Direction de la recherche et des projets spéciaux du ministère des Affaires municipales. Ceux qui touchent à l' urbanisme ne sont publiés qu' à titre informatif et ne représentent ni la politique ni les directives du gouvernement. Des documents antérieurs portaient sur les dépotoirs, les antennes paraboliques, les «gîtes du passant» les lieux de culte, la fabrication en temps opportun et les enseignes mobiles. Le prochain numéro de la série portera probablement sur les galeries de jeux vidéo.

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refus de permettre une ouverture 24 heures sur 24 aux motifs que la suppression totale de la restriction ne constituait pas une dérogation mineure. (V 860140)

En 1987, l'ancien exploitant d'une station-service de North York - qui habitait à côté - s'est opposé à l'ajout d'un poste de ravitaillement en gaz naturel à la station. La Commission a convenu que ses inquiétudes quant à la sécurité, au bruit, à l'aspect et à la perte sur la valeur de sa propriété étaient justifiées; la dérogation n'a pas été réputée mineure. (V 870149)

L'intention d'une grosse compagnie pétrolière de transformer une station-service en une installation pour effectuer les vidanges "Mr. Lube" et un poste de distribution de carburant en libre-service sur la principale artère de Vanier a donné lieu à un appel contre le règlement municipal de restriction provisoire, en 1987. La ville a donné l'explication suivante : elle avait créé une zone de mise en valeur commerciale et prévoyait à ce moment-là de redonner de la vitalité à l'artère "chemin Montreal Road". Cette explication a réussi à convaincre la Commission qui a rejeté l'appel. (R 870250)

Dans le village de Cardinal, un appel de 1988 contre l'installation d'un poste d'essence avec des réservoirs souterrains de propane sur une décharge a été gagné. La Commission a jugé que les inquiétudes sur la stabilité du terrain n'étaient pas bien fondées, mais le conseil n'avait pas appliqué la politique du plan officiel selon laquelle ce dernier devait être convaincu que les nouveaux commerces n'auraient pas de conséquences néfastes sur ceux existants dans le village.
(R 870477)

CONCLUSION

À la suite de changements opérés dans les quelques dernières années, la réparation des véhicules et les services aux automobilistes se posent maintenant en termes d'urbanisme. Les municipalités à l'avant-garde ont anticipé les problèmes potentiels en précisant leur politique et leurs règlements. On a reconnu que la conception est un élément important lorsqu'il s'agit de rendre les stations-service compatibles avec le cadre dans lequel elles se trouvent. Les solutions applicables dans une municipalité ne sont pas nécessairement appropriées ailleurs mais ce rapide tourd'horizon peut être utile à une municipalité envisageant la nécessité de revoir sa politique en ce domaine.

POST-SCRIPTUM

Coup d'oeil sur l'avenir

Les stations-service ont subi d'importants changements au cours des 25 dernières années. Nous ne devrions pas être surpris si des changements encore plus substantiels surviennent dans un proche avenir. L'article suivant, tiré de la revue "Public Innovation Abroad", suggère un de ces changements dans son édition de mars 1989.

Des robots distributeurs d'essence?

Un groupe de travail établi par le centre d'énergie pétrolière du Japon travaille sur un projet de robots dans le but de réorganiser les opérations des postes d'essence. (Contrairement à l'Europe et aux États-Unis, les postes d'essence libre-service n'ont pas été introduits au Japon où les lois sur les incendies exigent que les substances inflammables soient manipulées par des personnes qualifiées. Les chances que les lois changent pour permettre aux stations-service d'opérer sont minces.)

Toutefois, les robots distributeurs d'essence sont déjà sur la planche à dessin, en grande partie dû à la compétition intensive parmi les compagnies pétrolières suite à la dérèglementation et à la suppression des quotas de production d'essence. Les plans pour le service complet des robots nécessitent que ceux-ci identifient les modèles de voitures, qu'ils prennent les instructions relatives à la quantité d'essence demandée par le consommateur, qu'ils enlèvent les bouchons d'accès au réservoir, qu'ils pompent la quantité d'essence voulue, qu'ils manipulent l'argent ou les cartes de crédit lors du paiement. Pour les voitures dont l'accès au réservoir doit s'effectuer par l'intérieur de la voiture, le robot demandera au conducteur, d'une voix féminine, d'activer le loquet.

L'équipe du projet, qui maîtrise la technologie de base, travaille maintenant à perfectionner le robot pour que celui-ci puisse diagnostiquer lui-même les défaillances du système. Les erreurs, telles un pistolet de distribution qui passe à côté de l'orifice de remplissage et qui répand de l'essence sur la voiture et sur le sol peuvent, avant que l'essence ne soit automatiquement coupée, être très dangereuses et très coûteuses. "Nous prendrons des mesures de prévention plus qu'adéquates" a déclaré un porte-parole du Centre, cité par les journaux japonais. "Nous voulons développer un système capable de s'autodiagnostiquer, capable de déceler les dérèglements potentiels et capable de réparer lui-même les problèmes mineurs."

catégorie bureaux-résidentiel. Un dépanneur a été rayé de la liste des usages éventuels. Le 31 mai 1988, la Commission a convenu d'approuver le règlement municipal et les désignations du plan officiel dûment modifiés, sous réserve de l'approbation préalable d'un relevé de l'emplacement visant à assurer une certaine protection aux riverains.

Source : Dossier R 870226 de la Commission des affaires municipales de l'Ontario, sur le règlement 50-86

Réservoir de propane dans la zone résidentielle de Hamilton

Trente riverains se sont opposés à une demande de dérogation mineure pour pouvoir installer un réservoir de propane dans l'îlot de ravitaillement d'un garage public de Hamilton. Le propriétaire désirait ravitailler en carburant un parc de 35 taxis convertis au propane. La propriété se trouvait dans la catégorie de zonage dite commerciale générale, qui permet une grande diversité d'activités, y compris une station-service. L'existence d'une disposition dans le règlement municipal interdisant l'érection ou l'extension d'une construction ou d'un bâtiment quelconque, sauf conformément à un relevé d'emplacement annexé au règlement sous la lettre "A" constituait la seule raison d'une dérogation. Cette disposition avait été incluse car la propriété était située en bordure d'une zone résidentielle.

La demande a été refusée par le comité de dérogation et le refus a fait l'objet d'un appel. Le 14 juillet 1986, le conseil municipal a confirmé la décision du comité, invoquant le fait que l'érection d'un réservoir aussi grand ne pouvait pas être considérée comme une dérogation mineure dans un quartier de maisons unifamiliales.

Source : Dossier V 860126 de la Commission des affaires municipales de l'Ontario sur le 115, chemin Sanatorium

La conversion d'une station-service fait l'objet d'une opposition dans le canton de Pittsburgh

Certains riverains se sont opposés à la proposition de conversion d'une station-service sur la route 2, à l'est de Kingston, en un poste de distribution de carburant avec dépanneur, restaurant de plats à emporter et pizzeria. Lorsque le canton de Pittsburgh a adopté un rezonage pour permettre le changement, les riverains ont fait appel entraînant ainsi une audience devant le conseil municipal.

Le premier souci des adversaires du projet était l'absence de restriction sur les heures d'ouverture; le conseil n'avait pas l'habitude d'imposer de telles restrictions et avait voulu conserver cette attitude en la circonstance. Ces adversaires habitaient tous depuis longtemps dans le quartier et ils apportaient comme argument que la coexistence avec un motel, une garderie et une station-service se passait sans problèmes depuis plus de vingt ans. Les heures habituelles de ces établissements étaient limitées aux heures de jour, même pour le motel peu fréquenté en hiver et plein à 18 h en été. Compte tenu du fait que les établissements allaient rester ouverts jusque 1 h du matin, le changement proposé était considéré comme une altération du caractère du quartier et allait avoir un effet néfaste sur la tranquillité de la vie campagnarde dont les riverains avaient pu jouir jusqu'à présent.

La Commission a observé que le plan officiel comportait une déclaration selon laquelle "tout nouveau projet doit être conçu et construit de façon à s'intégrer dans le cadre actuel et à être compatible avec celui-ci...". Elle a jugé que la municipalité n'avait pas réglé convenablement le problème des véritables conséquences de la proposition sur la zone résidentielle voisine. Aucun partisan du règlement n'a apporté de preuve montrant l'illégitimité des inquiétudes des adversaires. La déclaration de l'avocat du propriétaire selon laquelle le fait d'accepter une limitation quelle qu'elle soit aboutirait à un suicide commercial n'a rassuré ni les riverains ni la Commission quant à la question des conséquences ou de la compatibilité. L'urbaniste du canton avait appuyé le changement mais avait recommandé que le conseil envisage des restrictions sur les heures d'exploitation.

L'appel a été accueilli le 4 mars 1988.

Source : Dossier R 870466 de la Commission des affaires municipales de l'Ontario sur le règlement 36-87

Autres décisions sur les stations-service

Une décision prise à Mississauga en 1986 concerne une dérogation mineure à une restriction de zonage sur les heures d'ouverture d'un poste d'essence. De l'avis de la Commission, cette restriction n'avait pas sa place dans un règlement de zonage; elle a donc rejeté l'appel contre un

La **Ontario Petroleum Association** (Association ontarienne du pétrole) a recommandé les définitions suivantes :

Un **poste d'essence** est un commerce de détail dont la principale fonction ets de vendre des produits et des carburants pour les véhicules automobiles.

Une **station-service** est un commerce de détail dont la fonction première est de vendre des produits et des carburants pour les véhicules automobiles, d'effectuer des réparations ou d'entretenir lesdits véhicules, à l'exclusion de travaux de débosselage sur la carrosserie ou sur les ailes.

La définition ci-dessus ne fait pas de distinction entre une station-service et un garage.

D. Autres éléments de réglementation

Outre les éléments habituels de planification relatifs à l'utilisation du sol, on trouve dans la Loi sur les municipalités (article 210, paragraphe 151), des références précises pour octroyer des permis aux propriétaires des stations-service, les réglementer et les régir. L'article 212 de cette même loi traite de la réglementation des heures de fermeture. Le paragraphe 152 de l'article 210 a été abrogé en 1988; il prévoyait de limiter le nombre de stations-service et de garages publics. Dorénavant, on ne peut imposer cette limite que par le truchement du zonage.

La définition d'une station-service dans l'article 210 de la Loi sur les municipalités correspond à la notion traditionnelle :

L'expression **station-service pour véhicules automobiles** s'entend du bâtiment ou de l'endroit où sont entreposés ou gardés à des fins de vente, de l'essence, de l'huile, de la graisse, de l'antigel, des pneus, des chambres à air, des accessoires pour pneus, des ampoules électriques, des bougies et des batteries pour véhicules automobiles, ainsi que du bâtiment ou de l'endroit qui peut être utilisé pour huiler, graisser ou laver de tels véhicules, régler l'allumage, souffler les pneus, recharger les batteries et effectuer uniquement des réparations mineures ou courantes essentielles au fonctionnement des véhicules automobiles.

Les règlements aux termes de la Loi sur la manutention de l'essence traitent des problèmes de sécurité que posent les stations en libre-service.

DÉCISIONS DE LA COMMISSION DES AFFAIRES MUNICIPALES

Conversion controversée d'une station-service à Aylmer

Lorsque la Ville d'Aylmer a adopté un nouveau plan officiel, l'élément le plus litigieux présenté à la Commission des affaires municipales de l'Ontario était une proposition pour autoriser l'installation d'une beignerie et d'un poste d'essence sur l'emplacement d'une ancienne station-service ouverte pendant très longtemps. Abandonnés depuis quelques années, les pompes et les réservoirs avaient été enlevés. Le zonage actuel, B2, autorisait une station-service et un café annexe, mais non un magasin de détail.

L'emplacement en question se trouvait à l'intersection de la rue Talbot (route 3) et de la rue Elm, voie principale d'accès à la zone industrielle de la ville. Dans le nouveau plan, le quartier avait été désigné zone commerciale générale, ce qui autorisait l'usage proposé, mais vue l'opposition des riverains, la question a été portée devant la Commission. En réponse à cette opposition, le conseil municipal a décidé de changer la désignation pour l'appellation générale bureaux-résidentiel, mais a en outre proposé, par disposition particulière, d'autoriser "un café-beignerie, un dépanneur et un poste d'essence". Selon les adversaires du projet, il n'était pas nécessaire d'avoir un poste d'essence supplémentaire et un dépanneur, puisqu'on comptait déjà environ 13 postes d'essence dans un rayon de trois kilomètres et huit ou neuf dépanneurs à Aylmer, dont un au coin diagonalement opposé. Leur souci particulier venait du fait qu'une beignerie serait vraisemblablement ouverte 24 heures sur 24.

Deux urbanistes ont fourni des preuves à l'appui de la demande. Ils ont expliqué que la circulation au coin était extrêmement dense, en particulier avec les camions, ce qui ne convenait pas à une zone résidentielle. L'endroit était aussi proche d'une "église missionnaire" très dynamique, qui avait érigé des bâtiments portatifs pour abriter ses nombreuses activités.

La Commission a reconnu l'intention de la municipalité mais a apporté quelques modifications précisant qu'un poste d'essence, une beignerie et un café étaient autorisés sur l'emplacement mais pas normalement dans la

ii)qui ne comprend ni une station-service, ni un garage public, ni un lave-auto.
Ville de Vaughan

Station-service: signifie un bâtiment ou un endroit:
i)où sont entreposés ou gardés à des fins de vente ou de ravitaillement direct d'un véhicule automobile, de l'essence ou d'autres carburants;
ii)où sont effectuées les réparations mineures ou courantes essentielles au fonctionnement des véhicules automobiles et où sont vendues aux automobilistes les marchandises habituelles à ce commerce;
iii)qui ne comprend pas un établissement de vente de véhicules automobiles, ni un garage public, ni un lave-auto, ni un garage.
Ville de Vaughan

Magasin de pièces automobiles: signifie un bâtiment ou une partie d'un bâtiment, où l'activité principale est de vendre des pièces, des accessoires et des outils au détail, et qui peut également avoir des postes de travail pour effectuer des réparations automobiles spécialisées, mais ne comprend pas d'atelier, ni pour la tôlerie ni pour la peinture.
Ville de Vaughan

Garage public: signifie un bâtiment utilisé pour l'entretien, les réparations ou l'équipement des véhicules automobiles mais ne comprend pas un atelier de tôlerie ni un établissement de vente de véhicules.
Ville de Vaughan

Garage et atelier de tôlerie: signifie un bâtiment ou un endroit où sont effectués sur des véhicules automobiles des réparations d'ordre mécanique ou de légères modifications, ainsi que des réparations ou des changements importants à la carrosserie des véhicules automobiles.
Ville de Mississauga

Lave-auto: signifie un bâtiment utilisé, en totalité ou en partie, pour le fonctionnement d'un équipement adapté au lavage des voitures avec une capacité de lavage dépassant 10 voitures par heure.
Ville de Mississauga

Lave-auto manuel: signifie un ensemble d'installations permettant le lavage et le nettoyage en libre-service des véhicules, par des moyens manuels : pulvérisateurs, aspirateurs et autres appareils de ce type.
Ville de Pickering

Lave-auto mécanique: signifie un ensemble d'installations permettant le lavage et le nettoyage des véhicules, à la chaîne, par des moyens mécaniques totalement enclos dans un bâtiment.
Ville de Pickering

L'expression **poste de distribution de carburant-dépanneur** s'entend d'un établissement comprenant une ou plusieurs aires de ravitaillement en carburant aux véhicules automobiles, avec ou sans kiosque, et un dépanneur. Ce type d'établissements ne permet pas la présence de postes de travail.
Ville de Burlington

La définition d'une **station-service-dépanneur** est la même que celle d'un poste de distribution de carburant-dépanneur, sauf que des postes de travail y sont autorisés pour effectuer des réparations courantes aux véhicules des clients.
Ville de Burlington

Un ensemble **station-service-dépanneur-petits commerces** est un établissement comptant une ou plusieurs aires de ravitaillement en carburant aux véhicules automobiles, avec ou sans kiosque, un dépanneur et, le cas échéant, l'un ou l'autre des commerces suivants, annexe ou non du dépanneur :
-nettoyeur;
-développement de photos;
-vente de pièces et d'accessoires automobiles dans la mesure où il n'y a pas d'atelier pour les poser;
-loisirs;
-photographe (vente d'appareils, de fournitures et de services);
-agence de voyage;
-location de bandes vidéo à l'exclusion de machines à boules ou de jeux électroniques sur les lieux.
Ce type d'établissements ne comprend pas de garage pour véhicules automobiles ni de lave-auto mais peut comprendre des postes de travail.
Ville de Burlington

Les directives fournies par la **Ville de Burlington** en 1988 portent sur la conversion des stations-service en usage combiné d'un poste de distribution de carburant et d'un dépanneur. Ces conversions, tout comme les propositions de nouveaux usages combinés comme celui-ci, sont soumises à un contrôle par le truchement du rezonage. Seuls les terrains à l'angle de deux rues peuvent constituer d'éventuels emplacements et l'on précise qu'il faut une largeur minimale de façade : 45,7 m dans les voies ayant moins de 26 m de largeur, et 48,7 m dans les voies plus larges. On n'appuiera aucune demande de conversion lorsque l'emplacement est contigu à une zone résidentielle sur deux côtés ou plus. La superficie maximale d'un dépanneur ou d'un autre magasin à usage unique est fixée à 278,8 m^2 et la superficie totale de construction à 557,6 m^2, outre le bâtiment de la station-service. Cette mesure vise à empêcher les magasins autorisés à s'installer de concurrencer les centres commerciaux déjà prévus. On décourage l'ouverture de restaurants qui ne seront envisagés que dans le cas où il n'y a pas de zone résidentielle contigue. La vente de produits alimentaires chez un dépanneur est permise lorsqu'elle est limitée et que le magasin ne comporte pas de places assises. Les jeux vidéo et les machines à boules sont spécifiquement défendus, mais la location de bandes vidéo est autorisée. On donne la liste d'un certain nombre de questions en rapport avec l'imposition de restrictions quant à l'emplacement. L'une de ces restrictions est la suivante : "Aucun étalage extérieur de produits alimentaires et de marchandises sauf ce qui est autorisé pour une station-service".

Étant donné la double nature d'une station-service convertie d'une part et la prévision d'un grand nombre de véhicules automobiles d'autre part, la circulation et le stationnement font l'objet d'une attention particulière au moment de la révision du plan d'implantation, en fonction de neuf critères. L'élimination des ordures constitue également un point important et la question des poubelles et des clôtures figure dans une liste.

Burlington a créé une nouvelle catégorie de zonage pour les usages combinés, catégorie précisée dans les définitions de zonage. Chaque demande acceptée entraîne un rezonage particulier à l'emplacement, qui en limite l'usage à l'un des trois types définis.

L'étude détaillée faite en 1988 pour **Mississauga** sur les services de distribution de carburant et de révision automobile a conduit à la proposition d'un certain nombre de modifications au plan officiel de la municipalité et aux règlements municipaux de zonage. Nombreuses sont les directives semblables à celles indiquées plus haut. On encourage les demandeurs d'exploitations spéciales à s'implanter aux intersections principales, sauf lorsque celles-ci sont d'une importance particulière quant à l'image de la ville, au caractère du quartier, au paysage ou à d'autres éléments naturels. (On donne quelques-unes de ces exceptions, à titre d'exemple.) On dissuade l'implantation de postes d'essence seuls aux intersections importantes. Sont donc permis avec un poste de distribution de carburant, les dépanneurs et les commerces divers (coiffeur, nettoyeur...) jusqu'à concurrence d'une surface brute de location maximale de 130 m^2, pourvu qu'ils satisfassent à certains critères. Les conséquences sur le marché de chaque proposition constituent une préoccupation importante. Les guichets automatiques sont spécifiquement mentionnées mais on décourage l'installation de restaurants et la phrase indiquant la possibilité d'un restaurant annexe d'une station-service et en faisant partie intégrante, a été biffée de la liste des services permis dans certaines zones commerciales en bordure de route. Cela porte en particulier sur les restaurants-minute et les beigneries qui peuvent ne pas être compatibles avec des zones résidentielles, notamment en raison d'une affluence possible de circulation. Les demandes concernant les restaurants sont considérées selon l'intérêt que chacun présente. Tous les types de lave-auto sont exclus dans les emplacements commerciaux en bordure de route dans les zones résidentielles.

Les directives de Mississauga concernant la conception des exploitations en bordure de route visent à s'assurer qu'elles s'harmonisent avec l'utilisation avoisinante. Dans une déclaration officielle de principe, on encourage l'intégration de postes de distribution de carburant dans des centres commerciaux de toutes sortes.

Selon une étude des normes d'aménagement des stations-service, la **Ville de Scarborough** a publié un rapport sur la conception des stations-service. Ces normes ont été adoptées en vue d'être appliquées suite à l'approbation d'un emplacement.

B. Définitions de zonage

Poste d'essence: signifie un bâtiment ou un endroit:

i)où sont entreposés ou gardés à des fins de vente ou de ravitaillement direct d'un véhicule automobile, de l'essence ou d'autres carburants et de l'huile;

(restaurant, beignerie); 3) un guichet automatique 4) des jeux vidéo et des machines à boules 5) d'autres commerces.

Les conséquences d'une application particulière pourraient différer considérablement selon la combinaison des usages proposées ci-dessus.

A. Politique

Le plan officiel de la **Région de Durham** comporte les critères de localisation suivants pour les stations-service :

a)de l'avis du conseil local, la situation géographique ne doit pas constituer une nuisance pour une zone résidentielle proche;

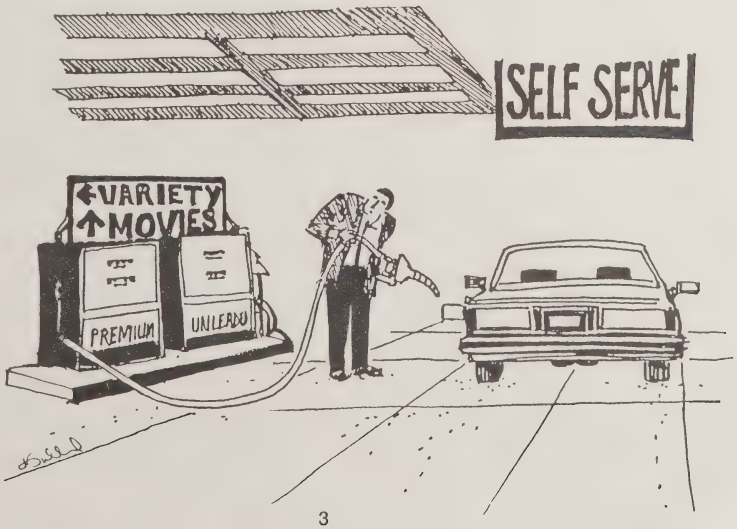
b)elles doivent être situées sur des routes à grande circulation ou sur des voies d'accès et de sortie et on doit pouvoir y accéder à partir de ces voies;

c)elles ne doivent pas être situées près ou en face d'une école.

Quelques municipalités ont récemment étudié le sujet et adopté une certaine politique. Ce document d'information a été rédigé principalement à partir de renseignements fournis par les municipalités de Pickering, de Mississauga et de Burlington.

La **Ville de Pickering** a, depuis la modification n° 33 apportée en 1988 au plan officiel, une politique sur les postes de distribution au détail de carburant, qui prévoit un contrôle rigoureux en exigeant, pour chaque demande, un rezonage et le respect d'un certain nombre de critères. L'accès est limité aux routes à grande circulation et aux voies d'accès et de sortie, à l'exception d'un accès secondaire à un poste d'essence à partir d'une voie de moindre importance. Le nombre de postes est limité à 2 dans les 100 mètres d'une intersection, de préférence à deux angles diagonalement opposés, plus 1 de chaque côté de la rue entre les intersections. Suit une liste de différents critères relatifs à la conception. D'autres usages commerciaux peuvent être autorisés au même endroit pourvu qu'ils satisfassent à certains critères. Il est spécifiquement exclu d'envisager l'installation d'un lave-auto mécanique dans les limites ou à proximité d'une zone résidentielle.

Les catégories de zonage du modèle de Pickering distinguent les postes d'essence des stations-service, et ces types d'exploitation avec ou sans lave-auto (manuel ou mécanique). Ce sont ces catégories que l'on utilise pour rédiger les modifications relatives au zonage adapté aux emplacements en question.



combustibles de ce ministère. Depuis 1973, celui-ci a rendu obligatoire l'approbation au niveau de la municipalité avant de pouvoir envisager une approbation de la province. Les municipalités ont recours au zonage pour contrôler l'emplacement des exploitations en libre-service et, dans certains cas, c'est en vertu de ce zonage que des exploitations ont été interdites. Pourtant, la résistance initiale à l'introduction des postes de distribution d'essence en libre-service s'est estompée à mesure qu'étaient réglées les questions de sécurité du consommateur, et le libre-service est maintenant largement accepté.

B. Les postes de distribution de carburant ne sont plus des stations-service

Avant l'avènement du libre-service, l'expression "service complet" était associée à un poste d'essence qui fournissait du carburant et qui offrait également de faire une gamme complète de réparations. De plus en plus, l'atelier et le poste de distribution se dissocient et deviennent deux exploitations séparées en des lieux différents. Il semblerait que les véhicules automobiles aient besoin de révisions moins fréquentes mais de plus en plus complexes et nécessitant un équipement et du personnel spécialisés. La réparation automobile est entrée dans le domaine du service spécialisé effectué soit chez le concessionnaire, soit chez un garagiste spécialisé pour l'échappement, la transmission, les freins, les pare-brise, ou les radiateurs, etc. Il ressort d'une enquête récente faite à Mississauga, que moins de 20 % des postes de travail de la municipalité étaient associés à la distribution de carburant; en réalité, la plus grande partie (24%) étaient associés à des concessionnaires automobiles.

C. Un service 24 heures sur 24

Si les stations-service ouvertes 24 heures sur 24 sont idéales pour la commodité des utilisateurs, elles n'en multiplient pas moins considérablement les risques d'incompatibilité avec toute développement résidentiel dans les environs. Cette situation tend également à favoriser les stations appartenant à des grosses compagnies pétrolières, aux dépens de petites stations offrant le service complet traditionnel.

D. Diversification des services offerts

Parmi les autres services commerciaux que l'on trouve près d'un poste de distribution d'essence, notons les dépanneurs, les restaurants-minute, les lave-auto ou la location de bandes vidéo. Actuellement, une importante compagnie pétrolière met à l'essai le One Stop (Arrêt unique); il s'agit de la combinaison d'un poste d'essence en libre-service ouvert 24 heures sur 24, d'un lave-auto actionné par le client, d'un mini-magasin et d'un guichet automatique. Il est clair qu'une telle diversité peut engendrer des problèmes, notamment les conséquences de ces commerces supplémentaires sur les magasins actuels de la municipalité.

E. Les postes de distribution de carburant devenus vacants

A mesure que le nombre total de postes d'essence diminue, certains emplacements vacants deviennent disponibles pour d'autres usages. Ces emplacements vacants sont le plus souvent situés dans des quartiers d'habitation et non à des intersections importantes; en conséquence, il peut arriver que les usages éventuels n'aillent pas de pair avec le développement du quartier. Les parcs de stationnement pour véhicules d'occasion et les garages sont parmi les utilisateurs potentiels les plus courants d'emplacements de postes d'essence devenus vacants. Pour éviter des surprises désagréables, il faudrait vérifier le zonage actuel des emplacements de stations-service pour voir si de telles utilisations incompatibles sont autorisées.

RÉGLEMENTS RELATIFS AUX STATIONS-SERVICE

Pour calmer ces inquiétudes, plusieurs municipalités ont adopté une politique et pris des mesures réglementaires. Nous proposons ici quelques exemples à la réflexion des municipalités.

Pour tenter de repérer différents services associés à la distribution de carburant et à l'entretien des véhicules automobiles, il faut distinguer les divers services automobiles d'une part, et d'autre part les services commerciaux connexes pour les personnes et non plus pour les véhicules.

Dans le premier groupe, on trouve généralement :

1) un poste d'essence; 2) une station-service; 3) un lave-auto; 4) un atelier de tôlerie; 5) un garage public; 6) d'autres services aux automobilistes (par exemple, réparation des pots d'échappement, de la transmission).

Dans le second groupe, on trouve généralement :

1) un dépanneur; 2) des services d'alimentation

QUESTIONS D'AMÉNAGEMENT

Numéro 7

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INFO • FICHE

Ontario Ministère des Affaires municipales
John Eakins, ministre

STATIONS-SERVICE



"Un poste de distribution de carburant à S.... compte cinq pompes, vend des pizzas, a des machines à sous et assure le repas du bal annuel des élèves de l'école Lakeland, mais on ne peut y faire réparer une courroie de ventilateur." *Canadian Business novembre 1979*

INTRODUCTION

Ce document d'information présente une étude des changements intervenus dans le rôle des stations-service au cours des deux dernières décennies et donne des exemples de quelques règlements qui en ont résulté. On observe une diminution du nombre total de postes d'essence et une augmentation du nombre moyen de pompes aux postes nouveaux (12 pompes ou plus au lieu de 4 ou 6). Ces changements traduisent un abandon des petites exploitations de quartier au profit de grosses stations aux intersections importantes.

Plusieurs points ont été relevés:

A. La tendance au libre-service

On a pu constater une nette évolution du service complet vers le libre-service au cours des années 70. Ce changement est un exemple flagrant des conséquences qu'entraînent les techniques perfectionnées sur notre façon de vivre, conséquences qui ne sont pas favorablement accueillies par tout le monde. Le libre-service dépersonnalise le ravitaillement en essence et supprime des emplois pour des personnes dont les possibilités sont limitées. Les inquiétudes exprimées portent généralement sur une diminution de la sécurité du consommateur, le désagrément de devoir se servir soi-même, un manque de service et d'entretien du véhicule.

Toutes les propositions pour des postes d'essence en libre-service doivent, aux termes des règlements de la Loi sur la manutention de l'essence, être approuvées par le ministère de la Consommation et du Commerce. Les normes sont appliquées par la Direction de la sécurité des

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Ontario Ministry of Municipal Affairs
John Eakins, Minister

SALVAGE YARDS



INTRODUCTION

The term salvage yard describes a variety of operations involving the storage, partly or wholly in the open, of goods or materials. It includes a junk yard, a scrap metal yard and an automobile wrecking yard.

In all its forms, the salvage yard is potentially incompatible with its neighbours. Complaints may come from industrial and commercial as well as residential, institutional or recreational uses. Some operations are limited to storage and are primarily liable to be an eye-sore but the major problems are associated with the processing of scrap materials, rather than with mere storage. Automobile wrecking is the prime example. Many automobile wreckers merely store and strip junked cars, with no major processing involved. The residual hulks are shipped to a processor, where they are prepared for sale to a steel mill. Serious problems with noise, dust, smoke and water pollution can occur in connection with the processing operation. Wrecking and processing are two phases of the auto scrapping process but the two phases may overlap. Generally, wreckers prefer a highway location, whereas processors seek railroad access in an industrial area and use expensive specialized equipment.

From time to time, the Research and Special Projects Branch of the Community Planning Wing of the Ministry of Municipal Affairs will issue brief information sheets on issues of current interest. This is the first such bulletin in the series. Planning Info-sheets are for information but do not represent government policy or recommended guidelines. The by-law provisions given in the examples are likely to be the result of research and consultation by their authors but their publication in this information sheet does not imply a provincial guarantee. Similarly, expressions of opinion are intended to be helpful and informed but are not statements of a provincial position.

REGULATING SALVAGE YARDS

OFFICIAL PLANS

Many official plans include policies to deal with salvage yards. They include provisions dealing with their location, with screening from adjoining uses and with the pollution of watercourses. Provision may also be made for an accessory dwelling for the owner or an employee.

ZONING BY-LAWS

Precise definitions are included in the zoning by-law to ensure that the use is not construed to be permitted as of right in a general industrial zone under a category such as warehousing. The by-law should distinguish clearly between storage and processing if the intention is to permit storage and stripping of wrecks in areas where processing is to be prohibited. Some bylaws define a salvage **shop** separately as a wholly enclosed use.

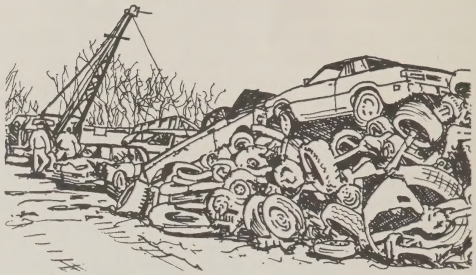
Zoning definitions

"Salvage yard means an establishment where goods, wares, merchandise, articles or things are processed for further use and where such goods, wares, merchandise, articles or things are stored wholly or partly in the open and includes a junk or scrap metal yard and an automobile wrecking establishment."

[Township of Amabel]

"Salvage yard includes a lot and/or premises for the storage and/or handling and/or sale of scrap or used materials, which without limiting the generality of the foregoing, shall include waste paper, rags, wood, bottles, bicycles, vehicles, tires, metal and/or other scrap material and salvage and includes a junk yard, a scrap metal yard and an automotive wrecking establishment [as defined in section 2.19], including an ancillary automotive sales and service establishment and premises."

[Township of Stephen]



It is noteworthy that neither of the above typical definitions makes a clear distinction between a processor and an operation that is limited essentially to storage.

Zones in which salvage yards are permitted

Some zoning by-laws include a zone in which the only permitted use is a salvage yard [e.g. Salvage Yard C4], or permit a salvage yard by special provision in a particular location within a general industrial zone [e.g. M2-1]. Other by-laws may permit a salvage yard as a permitted use in an industrial category such as Disposal Industrial Zone.

Special Provisions applicable to Salvage Yards

Special provisions include minimum yard and lot area requirements and requirements for a planting strip, and/or a fence or wall, and regulations dealing with open storage and the type of construction.

Required Yards	(minima)	abutting Industrial zone	abutting any other zone
	Front yard depth	70 feet	100 feet
	Exterior side yard	70 feet	100 feet
	Interior side yard	70 feet	140 feet
	Rear yard depth	70 feet	140 feet
Lot Area	(minimum)	10 acres	

[Township of Kingston]

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Planting strip A planting strip is required around the perimeter of an area zoned Salvage yard (C4) and "...the height of the planting strip shall be 2.5 metres where the planting strip is adjacent to the front and side yards, and 1.75 metres where the planting strip is adjacent to the rear lot line... where the side or rear lot line is adjacent to a railroad right-of-way, no planting strip is required;"

[Township of Stephen]

Fences "That part of the premises in which any chattels, lumber, automotive vehicle or part thereof is or are kept stored, dismantled or wrecked in connection with the salvage yard shall be fenced with a closed wooden and/or metal fence, extending at least two metres in height from the ground and constructed of new material.

No part of any such fenced area shall be within any required side, front or rear yard.

The outside perimeter of the fences shall be planted with evergreen trees and such trees shall not be less than 1.5 metres in height and shall be so spaced as to completely obscure the fence; and the trees shall be maintained in a healthy condition and any diseased or dead trees shall be replaced as soon as possible.

[Township of South-West Oxford]

Open storage "No open storage will be permitted in the front, side or rear yards with the exception of parking of motor vehicles in accordance with Section ..... of this by-law."

[Township of Stephen]

Type of construction "All buildings within the storage yard area shall be of masonry construction and no existing building not constructed of masonry (within the fenced area) shall be used in conjunction with any operation incidental to the wrecking of motor vehicles."

[Township of South-West Oxford]

Note : Site plan control or a property standards by-law may be more appropriate tools to control some of the features described above relating to planting, fences, etc.

SITE PLAN CONTROL

Site plan control can only be used if there is a policy in the local official plan showing the part(s) of the municipality in which it may be applied **and** if there is a site plan control by-law in effect. It can only be applied to development involving buildings or structures, not to vacant land. Once the prerequisites have been met, the municipality can require the developer of a salvage yard to submit plans and/or drawings for approval. As a condition of approval, various requirements may be imposed relating to such matters as walls, fences, hedges, trees, shrubs, landscaping, garbage storage facilities, lighting, easements, grading, parking, etc.

To ensure that the requirements are satisfied, the municipality should conclude a site plan agreement with the property owner.

PROPERTY STANDARDS BY-LAWS

A by-law pursuant to Section 31 of the Planning Act may prescribe standards for the maintenance of property. This may include screening, planting and fencing requirements around salvage yards. The removal of derelict vehicles, machinery or scrap from yards or vacant property may also be required. Such a by-law must be preceded by an an official plan amendment that includes provisions relating to property conditions or by an approved policy statement.

LICENSING BY-LAWS

Section 228 of the Municipal Act provides for the licensing and regulating of salvage yards, including automobile wrecking yards. Section 210(130) of the same Act states that municipal councils may pass by-laws "for prohibiting or regulating and inspecting the use of any land or structure for storing used motor vehicles for the purpose of wrecking or dismantling them or salvaging parts thereof for sale or other disposal." A car wrecker is required to obtain a licence from the Ministry of Transportation and Communications, pursuant to Section 41 of the Highway Traffic Act, in addition to any municipal licence.

DERELICT MOTOR VEHICLE SITES

A derelict motor vehicle is a form of waste governed by the Environmental Protection Act. The approval of sites for the storage of these vehicles has been delegated to municipalities.

LEGAL AND MUNICIPAL BOARD DECISIONS

Some of the problems associated with salvage yards are illustrated by the issues raised before the courts and the Ontario Municipal Board.

(i) Applications for amendments to the official plan and the zoning by-law to permit a salvage yard in the **Township of Orillia** were refused by the municipality and appealed. A number of concerns were expressed by members of the public at a municipal board hearing and these were summarized by the board under the following headings: devaluation of property values, traffic, noise, water pollution and aesthetics. During the hearing, the owner and the municipality came to an agreement. It called for the owner to limit his operation to storage and only that much processing of scrap as could be achieved with cutting machinery that could be held and controlled by hand. Use of heavy, noisy machinery would be avoided but the owner reserved the right to make an application for full processing at some time in the future. The board was satisfied that the agreement, together with a site plan control by-law and zoning restrictions, would provide adequate protection. On January 21, 1985 the board indicated it would direct the municipality to pass the official plan and zoning amendments whenever it was satisfied that the site plan agreement was registered on title. (Schachter and the Township of Orillia, 1985.)

(ii) If a scrap yard is a legal non-conforming use, occupying a portion of the owner's parcel of land, a problem may occur in determining just how much of the property may be used for the purpose of a scrap yard. This was illustrated in a case involving a scrap yard in the **Town of Haldimand**. The entire parcel had an area of 15 acres and was first used for a small scrap yard in 1952. In supporting the owner's application for a provincial licence, the municipal council required him to erect a board fence around his yard. Only about three acres were being used and this area was fenced. As the yard expanded, the fence was moved. The unused portion was sometimes used by neighbours for agricultural purposes. A zoning by-law was introduced in 1966. In 1974 the property was sold and the new owner continued to expand the operation. Following complaints by an adjacent owner, the council prosecuted him for an infraction of the zoning by-law. The prosecution was unsuccessful and that decision was upheld on appeal. The Divisional Court ruling found that the entire 15 acres should benefit from the legal non-conforming status because the municipality's communications in the past had recognized the entire property as the land in question, the owner and the original owner had always intended to use the entire area when required and the fence was never a complete enclosure and was always being moved as additional land was needed. (Regina v. Barry Humphrey Enterprises Ltd. 1977)

(iii) In a case in **Cambridge**, it was an industrial landowner who took offence at the prospect of getting a scrap yard as a neighbour. The city had agreed to sell lots in an industrial park to a residential developer who had an agreement to purchase a salvage yard in the path of residential development. The city also agreed to rezone the industrial lands to permit a salvage yard and thereby allow the yard to be relocated. The city lost on a legal issue before the courts, not on the planning merits. (Galt-Canadian Woodworking v Cambridge, 1982)

(iv) Although Section 110 (6) of the Municipal Act seems to give municipalities the right to refuse a licence at their discretion, the experience of the **Township of Eldon** may be instructive. In responding to an application for judicial review of that council's decision to refuse a licence for a salvage yard, a court found that the council had no intention of permitting a salvage yard anywhere in the municipality, whereas the licensing by-law purported to lay down conditions under which the activity of a salvage yard could be carried on. The court found this unacceptable and it granted an order of mandamus requiring the municipality to issue a licence. The court held that the council had used its powers to prohibit absolutely and not to regulate and thereby opened the door for judicial review of its actions. (4 M.P.L.R., August, 1978)

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